

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM
DWYER, and FRANK W. KETTENBACH,

Appellees.

Transcript of Record.

VOLUME VI.

(Pages 2001 to 2400, Inclusive.)

Appeals from the District Court of the United States for the
District of Idaho, Central Division.

(Testimony of Lewis M. Gray.)

Q. Now, were there any reports to the Comptroller covering the period of the life of any of those notes?

Mr. TANNAHILL.—We object to that as irrelevant and immaterial.

A. Yes.

Mr. GORDON.—Q. Which reports was it?

A. Well, it didn't come in under any,—yes, it did. No, there is nothing there that would bring it into the reports to the Comptroller.

Q. None of the three?

A. No. George Kester was no longer a director of the bank when these notes were given, and the \$20,000.00 is within the limit.

Q. Well, is there a note of Naylor & Norlin in the sum of \$30,806.42? A. I don't see it.

Q. On the books of the Lewiston National Bank?

A. I don't know of any such note.

Q. Can you find any in the register of bills receivable?

A. I haven't found any of that kind at all.

Mr. TANNAHILL.—The defendants object to this line of inquiry, upon the ground that it is incompetent, irrelevant and immaterial, and an investigation undoubtedly with the purpose of obtaining some information or evidence for use in another case, and not for the purpose of using it or benefiting this case one way or another, and it is irrelevant and immaterial, and does not tend to prove or disprove any of the issues in the cause. [1779—1449]

Mr. GORDON.—I don't know. You have set up in your answer here that a certain deed was given to

(Testimony of Lewis M. Gray.)

secure a note of \$30,806.42, given by Naylor & Norlin, and guaranteed by George H. Kester.

Mr. TANNAHILL.—That is a matter for our defense and for us to show when we get to it; it is not a matter that the Government is interested in. We allege too that that note was given to the Idaho Trust Company, and not to the Lewiston National Bank, and it is none of the affairs of the Lewiston National Bank. You might look until doomsday and you won't find it in the records of the Lewiston National Bank.

Mr. GORDON.—Q. Can you find any such note as that on the books of the bank?

A. No, there is no such note on the books of the bank. The notes I read off to you are the only ones there are.

Q. Now, have you the books here that will show the accounts of the depositors of the Lewiston National Bank in April, 1904? A. Yes.

Q. I wish you would look there and see whether Martha E. Hallett had an account in the Lewiston National Bank, either an open account or an account by way of certificate of deposit, or any other account, during April, May, June or July, 1904.

A. There is April, 1904; there is no account in there at all.

Q. Now, I will ask you the question: Is there an account of Martha E. Hallett,—did Martha E. Hallett have an account on the books of the Lewiston National Bank April 25, 1904? A. No.

Q. Did she have an account with said bank July

(Testimony of Lewis M. Gray.)

15, 1904? A. She did not.

Q. Can you find on the books of the bank, between November, 1903, and July 30, 1904, any account with Martha E. Hallett? A. No. [1780—1450]

Q. Now, you are reading from the ledger accounts, are you? A. Yes, from the ledger accounts.

Q. Now, what other accounts did they have at the bank,—the certificate of deposit account?

A. There might have been a certificate of deposit issued.

Q. Will you look and see if, during that period, a certificate of deposit was issued or outstanding or existing in the name of Martha E. Hallett during the period from November, 1903, to the 1st of August, 1904? A. No, I find nothing here of that name.

Q. I will ask you to look at the books of the Lewiston National Bank and tell us whether Van V. Robertson had an account with that institution at any time during the period from December 1, 1902, to June, 1903.

A. I find a deposit on the 10th day of April of \$100.00.

Q. What year? A. 1903.

Q. Is that the first deposit that you find?

A. That opens the account.

Q. That opened the account of Van V. Robertson?

A. Yes; April 10th, 1903.

Q. What is that account on the 20th of May, 1903?

A. Well, the balance on the 20th of May would be \$435.00.

Q. What is it on the next day?

(Testimony of Lewis M. Gray.)

A. Well, there isn't any next day. You said the 20th, didn't you?

Q. Yes. A. Well, on the 22d it is \$423.00.

Q. What is the account right along there from ten days before that, from the 10th of May? Read what the balances are.

A. This is an inactive account, and the balances are only run out once a month, May 18th to June 15th, there is just one balance put down [1781—1451] here, \$423.00, and during that time there was just two checks, \$12.00 on the 22d of May and on the 12th of June \$20.00.

Q. That covers the period from when?

A. May 18th to June 15th; the period before that, from April 18th to May 16th. There are \$505.00 total checks.

Q. What is the balance on the 18th of April?

A. The balance on the 18th of April was \$100.00; that is that \$100.00 that he deposited in the first place.

Q. What was the balance on the 16th of May?

A. \$455.00. He deposited \$60.00 on the 2d and \$800.00 on the 5th.

Q. You have read all the checks drawn during that period? A. All during that period.

Q. There was nothing drawn but two checks between the—

A. Between the 16th of May and the 15th of June only two checks.

Q. For what amounts were they?

A. \$12.00 and \$20.00.

(Testimony of Lewis M. Gray.)

Q. I will ask you to look through the books of the Lewiston National Bank and tell whether Geary Van Artsdalen had an open account or had an account with the bank at any time between the 1st of January, 1903, and the 1st of January, 1904.

A. There is nothing between January and July, 1903, in the name of Van Artsdalen.

Q. All right. Is there an account on the books of the Lewiston National Bank known as the Kester and Kettenbach timber account?

A. Yes, there is such an account here. The Kester and Kettenbach timber account was opened on June 19th, 1903, with a deposit of \$12,500.00.

Q. Now, do you know whether that continued for any length of time? Do you know in whose handwriting that entry was made?

A. No; I don't think—I think, that is, I am under the impression that that is Chapman; it looks like it anyway. [1782—1452]

Q. What is the next entry?

A. There is nothing there except that one entry in there.

Q. I will ask you if Elizabeth P. White had an account with the Lewiston National Bank during the year 1904? A. Elizabeth White?

Q. Elizabeth White.

A. She had two accounts, one Elizabeth White and the other was marked Elizabeth White, private. She always ran those two accounts.

Q. What was the condition of either of those accounts on April 25, 1904?

A. April 25th she had a balance of \$95.03, Eliza-

(Testimony of Lewis M. Gray.)

beth White; Elizabeth White, private, a balance of \$1,367.43.

Q. Now, what was the condition of either of those accounts July 14, 1904?

A. July 14th, Elizabeth White \$616.75, balance; Elizabeth White, private, \$2,483.56.

Q. Now, I will ask you to look at the account of William J. White, and tell what his account was April 25, 1904.

A. William J. White on the 25th of April, 1904, was overdrawn \$746.07.

Q. Run through that account and see when that overdraft was reduced.

A. He had two or three small deposits that didn't materially decrease it.

Q. When were they?

A. There was \$64.77 on the 17th of May, and \$53.00 on the 11th of May.

Q. What was the overdraft at those dates?

A. On the 10th of May the overdraft was \$955.89, and on the 11th of May there was a deposit of \$53.00, and the overdraft that night was \$912.54. [1783—1453]

Q. Now, state the next period that you find it reduced.

A. Then on the 16th of May the overdraft was \$962.51. On the 17th of May he deposited \$64.77, and that night the overdraft was \$897.77. On the 20th of June the overdraft was \$1,137.90. On the 21st of June a deposit of \$90.81 was made. At the close of business that day the overdraft was \$1,047.09. On the 8th of July the overdraft was

(Testimony of Lewis M. Gray.)

\$1,108.90. On the 9th of July there was a deposit of \$83.03, and at the close of business the overdraft was \$1,045.87.

Q. What was the condition,—was the overdraft reduced from the last date that you read to the 14th of July, 1904? A. No; it was increased.

Q. What was the condition of William J. White's bank account on the 13th of July, 1904?

A. An overdraft of \$1,054.37.

Q. What was it on the 14th? A. \$2,078.87.

Q. What had been drawn during that period?

A. A check of \$1,022.50, and a check of \$2.00.

Q. Now, do you know when that overdraft was taken up or made good?

A. On the 20th of July there is a credit to his account of \$2,350.00, making a credit balance of \$18,55. That was made by a note.

Q. Tell how it was made.

A. In the register of bills receivable of the Lewiston National Bank, No. 13,928, dated July 20, 1904, William J. White, six months, due January 20, 1905, \$2,350.00, marked paid March 22, 1905.

Q. Do you know how that was paid? Do the books of the bank show how it was paid?

A. There was a new note on the 22d of March, given by William J. White, for \$500.00 That doesn't seem to have gone to his account. I don't know—

Q. That don't make any difference. Go on. Do you know how that [1784—1454] was paid and the other note was paid?

A. There is nothing to show how that note is paid.

(Testimony of Lewis M. Gray.)

except that on that day there is \$2,500.00 charged to Elizabeth White's account.

Q. Was there a check put in?

A. I can't tell whether it was a check. There was an amount of \$2,500.00 charged to her account, and this \$2,500.00 is not charged to William J. White's account. I have no means of telling how that \$500.00 note was paid. June 5th; it wasn't charged to his account.

Q. Did Mamie P. White have an account with the Lewiston National Bank in her own name?

A. I haven't found one in the ledger.

Mr. TANNAHILL.—She didn't; she said she didn't.

Mr. GORDON.—I think she said she didn't. That is all.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Have you made search for anything, for all of the notes of Navlor & Norlin Company in favor of the Lewiston National Bank?

A. All that were in existence, you mean?

Q. Yes.

A. Yes; those that I found on there were the only ones.

Q. Those were the only ones? A. Yes.

Q. Are you positive that there is no other notes?

A. Well (pause). No, I wouldn't say now that I am absolutely positive that there are no other notes.

Q. There may have been some other notes that was in existence at that time?

(Testimony of Lewis M. Gray.)

A. There may have been some other notes in existence at that time.

Q. And you have no way of determining what credits have been made on those notes, the notes aggregating something like— [1785—1455]

A. \$30,000.00.

Q. \$40,000.00. Now, have you any way of determining whether there were credits on those notes, leaving a balance? In fact, there may have been credits on the note, may there not?

A. Well, not unless they were in this book. I have proved up these books on the loans and discounts for a number of years, and with the exception of about \$1,600.00 the books prove, so that there couldn't have been any payments of any account on those notes unless they were in these books.

Q. Unless they were omitted?

A. Well, if they were omitted altogether they wouldn't have gone into the funds of the bank. I mean that any money paid into the bank on account of these loans must be on here unless it was stolen.

Q. Then, you have found a \$15,000.00 note, a \$5,000.00 note, and a \$20,000.00 note, signed by Naylor & Norlin Company, guaranteed by George Kester?

A. Yes, sir; guaranteed by George Kester.

(By Mr. BABB.)

Q. Mr. Gray, I will ask you to state what you found on the books of the Lewiston National Bank the indebtedness of George H. Kester to be to that bank on the 6th of July, 1907, both as principal and

(Testimony of Lewis M. Gray.)

as surety and guarantor and endorser?

A. Well,—in 1907?

Q. Yes.

A. I didn't pay any attention to what he was surety on at that time.

Q. Well, what did you find the amount to be in which he was indebted as principal at that time?

A. As I remember it, it was \$20,000.00.

Q. That was on notes or overdrafts? [1786—1456]

A. That was,—he made his overdraft good by a note.

Q. It was \$20,000.00 and interest then?

A. \$20,000.00 and interest.

Q. Now, did you make any examination to ascertain what he owed as guarantor?

A. No, I did not, because when I was going through there that hadn't come up at all.

Q. Did you make any examination to find out what Naylor & Norlin were then owing to the bank?

A. I knew that they owed at that time about \$40,000.00. I have,—I took that off.

Q. What are the items on there, the amounts?

A. On July 1st their overdraft was \$25,647.53, and on the 26th of July it was \$42,330.99.

Q. What was it on the 6th of July?

A. According to this it was \$30,390.13.

Q. Was that evidenced by a note of Naylor & Norlin? A. Is that the forty-two thousand?

Q. This thirty thousand.

A. Well, that ran along until the 26th of July,

(Testimony of Lewis M. Gray.)

when it was reduced to \$2954.00; it was reduced \$40,000.00 at that time, credited to the account. On July 26th the overdraft was \$42,330.99. On the 27th they drew a check for \$1,889.96, and they deposited \$26,216.92 and \$15,000.00. The \$15,000.00 was their note. The \$26,000.00 appears to have been a cash item drawn on Seattle; at least there was an item of that amount sent up to the National Bank of Commerce on that day, and we take it for granted that that is what that was.

Q. The indebtedness then was reduced the amount of that note?

A. Well, that note of \$15,000.00, and there was still an overdraft of \$2,954.00, and that was on the 1st of August they gave another [1787—1457] note for \$5,000.00.

Q. What is owing now at this time as shown by the books on that account?

A. At this time there is nothing owing at the Lewiston National Bank; it was all taken out at the time of the transfer, as I understand it, in January.

Q. Taken out? You mean paid?

A. It was paid, yes, so far as,—yes, paid.

Q. Paid or assigned?

A. I really don't know whether it was paid or assigned. I only know it isn't on the books.

Q. It has either been paid or assigned?

A. Yes, paid or assigned. The Lewiston National Bank don't hold any indebtedness against them now.

Q. That was about the 1st of January?

A. That was the 8th or 9th of January.

(Testimony of Lewis M. Gray.)

Q. Now, that indebtedness of George H. Kester, \$20,000.00 and interest, what has become of that?

A. That went out the same way, on the 8th of January.

Q. At the same time?

A. Yes, at the same time.

Q. Then did you find there an indebtedness of William F. Kettenbach to the Lewiston National Bank?

A. I don't think there was anything at that time.

Q. The 20th of December, 1908, the 9th of March, 1909; have you looked for those?

Mr. GORDON.—I object to that on the ground that it is not proper cross-examination, the matter which the inquiry relates to not having been inquired into on the examination in chief, and if counsel desires to put in his case let him make the witness his own.

Mr. BABB.—You didn't inquire about Kettenbach at all?

Mr. GORDON.—Not about this matter you are referring to, sir. All [1788—1458] I inquired about was his overdrafts and how they were settled.

Mr. BABB.—Well, I think this will bear on that.

Q. The 20th of December, 1908, and the 9th of March, 1909? A. In 1908?

Q. Yes. A. No, I have not.

Q. You haven't examined the condition at that time? A. No.

Q. And you don't know? A. I don't know.

Mr. BABB.—That is all.

(Testimony of Lewis M. Gray.)

Mr. GORDON.—That is all, Mr. Gray.

WITNESS.—That Naylor & Norlin was \$8,000.00.
The rest of it has been paid, Mr. Babb.

Mr. BABB.—There is \$8,000.00 still due?

A. Not to the Lewiston National Bank. The balance on the 1st of January was \$8,000.00. [1789—1459]

[**Testimony of Joseph M. Molloy, for Complainant.**]

JOSEPH M. MOLLOY, a witness called on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Joseph Molloy? A. Yes, sir.

Q. Mr. Molloy, were you at one time employed in the United States land office at Lewiston, Idaho?

A. I was.

Q. During what period? A. From 1901 to 1906.

Q. And do you remember whether or not there was some land that became open to entry on the 25th of April, 1904?

A. I couldn't state as to the date, but about that date, I know. I suppose that is the correct date, yes.

Q. Was there a line-up before the land office for some time prior to that day? A. Yes.

Mr. TANNAHILL.—We object to that as irrelevant and immaterial.

Mr. GORDON.—Q. How long before the opening of the land office did that line begin to form?

Mr. TANNAHILL.—Allow us the same objection to all of this class of testimony.

(Testimony of Joseph M. Molloy.)

Mr. GORDON.—Q. Answer the question.

A. Oh, I think a week or ten days, or such a matter.

Q. Do you remember who formed that line-up?

A. No, I don't think I can.

Q. Well, I hand you a list. I wish you would look at that. [1790—1460]

I will ask you how the persons that were in that line-up stood in the line and how their filings were received at the land office on the morning of the 25th of April, when the land office was opened?

Mr. TANNAHILL.—The same objection.

A. They were formed in line one behind the other, and the first one in line was filed first.

Q. Who was the first one in line?

A. The first person written there is Jackson O'Keefe; that would be the first one here. Charles W. Taylor, Joseph H. Prentice, Edgar J. Taylor, Edgar H. Dammarell, George H. Kester, Eugene H. Hopper, Edith A. Hopper, Guy L. Wilson, Edna P. Kester, Frances A. Justice, Fred E. Justice, Elizabeth Kettenbach, Elizabeth White, William J. White, Mamie P. White, Martha E. Hallett, Daniel W. Greenberg, David S. Bingham, Albert Anderson, Walter E. Daggett, John R. McConnell, Warren Lawrence, Hattie Rowland, William McMillan, James E. Hood, John M. McLellan, Frank W. Cadwell, Charles B. Crane, Nathan A. Egbert, Dudley J. Gallagher, Ernest I. Leboutillier, George W. Reed, Dennis J. Grant, Otto Green, Frank F. Finks, Edward J. Broderick, Fred W. Crane, William W.

(Testimony of Joseph M. Molloy.)

Felter, Sidney Eberley, and Edward Kitts.

Q. Mr. Molloy, can you state whether or not there were any conflicts in the description of any of the entrymen who filed on that occasion?

Mr. TANNAHILL.—The same objection.

A. I think there was conflicts in one or two instances.

Mr. GORDON.—Q. Do you remember which they were?

A. I couldn't say now; I think the records would show.

Q. Do you remember, during the period some time between 1903 and 1905 or 1906, whether or not Mr. Clarence W. Robnett got from you at the land office blank forms of final proof papers?

A. Yes, he did, some time during that period.
[1791—1461]

Q. Do you remember whether he got them on one occasion or on a number of occasions?

A. I think more than once, yes, several times, I think.

Q. I said blanks. Do you know whether they were blanks, or did he borrow blank final proof papers and some that had been filled out also?

A. The blanks, you understand, were those printed questions?

Q. Yes. A. Yes, that is what he got.

Q. Did he ever get any that the questions had been answered on?

A. I don't remember as to that now.

(Testimony of Joseph M. Molloy.)

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Molloy, there was some people who stood in line that were unable to get claims, were there not, on the 25th of April?

A. Well, sir, I couldn't say now whether there was or not.

Q. There might have been? A. Yes.

Q. There were some timber and stone filings that were rejected on that day for various causes, some of them being because they conflicted with other filings that had previously been made, were there not? A. I think so.

Q. I will ask you if you remember the name of Edwin Bliss and Grace W. Greeley and Laura C. Burch, Lee B. Strasberg, Reeding Smalling, Ralph H. Chapman, Lee Pickering, and Abram Adams?

A. I remember Chapman, but as to the others I don't remember about them; the records will show.

Q. I hand you this list and let you examine it, which list appears to have been taken from the land office records, and see if that will refresh your memory as to the rejected applications on that day?

A. No; outside of Chapman I don't remember about the others.

Mr. TANNAHILL.—That is all. [1792—1462]

[Testimony of Edward C. Smith, for Complainant
(Recalled).]

EDWARD C. SMITH, upon being recalled as a witness on behalf of the complainant, testified as follows:

(Testimony of Edward C. Smith.)

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Smith, have you the individual depositor's ledger of the Idaho Trust Company? A. Yes, sir.

Q. I will ask you to turn to page 273 and read what appears on that page.

A. Account headed Kester and Kettenbach trust account, transferred from page 300. 1909, February 13th, \$657.42.

Q. That means \$657.42, was that an overdraft?

A. Yes, sir.

Q. What is the next item?

A. February 16th, interest on overdraft \$5.30.

Q. That increases the overdraft to what?

A. \$662.72.

Q. What is underneath that? How does that read? A. Kettenbach and Kettenbach.

Q. What is the next item,—116?

A. 116, G. K. P.?

Q. Yes. A. \$41.42 deposit.

Q. What is the next one?

A. \$7.16, W. F. K. deposit \$289.94, 1-2.

Q. That is one-half, that one-two?

A. F. W. K., deposit \$331.36.

Q. Turn to page 300 and see what that is.

Mr. BABB.—What dates are these?

Mr. GORDON.—The 16th of February.

Mr. BABB.—What year? [1793—1463]

WITNESS.—1909.

Mr. BABB.—Then I object to this matter as im-

(Testimony of Edward C. Smith.)

material and outside the issues, and move to strike it out.

Mr. GORDON.—Turn to page 300. That is all I want.

Now, did you bring those items that I asked for?

A. Note items?

Q. Yes.

A. Yes, sir. Now, before we start on these notes, I would like to be corrected on my former testimony in two instances. I find in checking up that I made an error. I find one note that I didn't report this morning or before, of Naylor & Norlin, upon which Kester was the guarantor. I didn't report that this morning; I overlooked it.

Q. Was that all? A. No; the next one—

Mr. BABB.—What was that note? What was the amount and date?

A. It is \$8,000.00, dated December 30, 1909.

Mr. GORDON.—Q. What was the other one?

Mr. BABB.—Who was it payable to?

WITNESS.—Payable to the Idaho Trust Company.

Mr. GORDON.—Q. What is the other one?

A. The other was in regard to my statement on the William F. Kettenbach note. Now, I find in my list the note that was marked paid the same date that note was made, consequently I assume that that was perhaps a renewal or part of it was a renewal; I told you it wasn't a renewal.

Mr. BABB.—What is this?

WITNESS.—William F. Kettenbach note, dated

(Testimony of Edward C. Smith.)

February 5, 1910.

Mr. BABB.—And the amount? [1794—1464]

WITNESS.—The amount is \$9,544.71.

Mr. GORDON.—Q. Where is the book that shows that transaction?

A. I have it on my list here.

Q. I want the book; I don't want the list.

A. All right. I will give you that too. There is a note of \$4,579.00; it was marked paid on February 5, 1910. That, you will notice, is the same date as this note.

Q. Yes. A. So I assumed that that—

Q. This note is 5607? A. Number, yes.

Q. Now, when a note is renewed don't you give it the same number?

A. Oh, no, no, sir; decidedly not.

Q. I understood you to say this \$9,544.71 note was for an entirely different transaction and had nothing to do with any of the other notes. Now, what was it that suggested to you to make that statement?

A. This morning?

Q. This morning and last night too.

A. Because I thought it was true.

Q. What did you think that \$9,544.00 note was for? What was it that you had in your mind and said you had just brought it along so that you would have all the notes, and that it had nothing to do with any former note?

A. I thought so because I knew practically what it was given for.

Q. Do I understand that that was to take up a note

(Testimony of Edward C. Smith.)

of \$4,579.00 and then more money was advanced?

A. Well, I can't say positively, but I assume it was to take up this note, by reason of the note bearing the same date that this was marked paid.

Q. Might not that other note have been paid by check or in cash? [1795—1465] A. Oh, yes.

Q. You have no individual recollection as to whether or not— A. No, sir.

Q. This \$4,579.00 note that was paid on the same date that this \$9,544.00 note was given, had they any connection with each other other than that one was given the day the other was paid?

A. Well, yes. I have,—yes, I know,—I am satisfied now that that, this note here was included in that.

Q. What has satisfied you of that?

A. Well, I have seen a statement of that.

Q. Where did you see the statement?

A. Well, I found the statement among our papers.

Q. Where is the statement?

A. I don't know whether I have got it in my pocket here or not. Perhaps I have got it here. Shall I see?

Q. Please.

(The witness thereupon handed a paper to Mr. Gordon.)

Q. What is this headed,—statement of C. C. & H. assets?

A. Colby, Corey & Howell, a lot of property he bought, purchased.

Q. Who made up this statement?

(Testimony of Edward C. Smith.)

A. I don't know.

Q. This is a correct statement, is it?

A. I don't know that.

Q. It is the one that you got your information from as to this note, is it not? A. Yes, sir.

Q. What is this first payment, what does it mean, "William," William F. Kettenbach?

A. William C. Lawrence,—on the second line there.

Q. Then, this note was given in settlement of some Colby, Corey, [1796—1466] & Howell obligations, was it?

A. Yes; he bought a lot of Colby, Corey & Howell property.

Q. And wasn't any security given for this note and some other transaction? A. No, sir.

Q. You are sure of that?

A. I believe so, unless you would consider that it is considered under our trust agreement.

Q. Do you know when this statement was made out? A. No, I do not.

Q. Where did you find it?

A. I found it among our papers and files.

Mr. GORDON.—I will ask that that memorandum be copied into the record.

The following is a copy of said memorandum:

(Testimony of Edward C. Smith.)

"STATEMENT C. C. & H. ASSETS.

09.		1909.	
- 9.	Original purchase.....	18,000.00	6- 1. 1st payment Wm. C. Lawrence 29,866.50
- 3.	Cavanaugh Lands.....	7,680.10	7-31. 2nd payment Wm. C. Lawrence 1,000.
- 3.	Heason notes and Tim- ber	7,124.45	1910.
- 3.	Exp. Note Cr. on Mill Account	203.35	1- 6. By Eugene Cox on desk. 20. 1-11. By Davis on wagon..... 30.
-17.	Pd. on I. T. Co. note Interest on 18,000	1,000 348.45	1,348.45
- 2.	Jas. E. Babb, bills.....	159.55	
-31.	Abstract Bill	9.60	
797-1467]			
-21.	Int. on 4,000 note Bal. 18,000 note	91.55	
-21.	Ck. cover O/D Mill a/c.	250.	
-24.	3d Sewer Assmt. city property	316.10	
-30.	Note & Int. I. T. Co., on 200 ft. frontage.....	4,579.00	
-31.	Ck. cover O/D Mill a/c.	100.	
010.			
- 3.	1909 taxes, city lots...	303.46	
- 5.	Int. on investment over and above receipts...	295.60	Bal. 9,544.71
		40,461.21	40,461.21

February 5, 1910."

Mr. GORDON.—Q. Now, I ask that you give me the notes that the notes that you brought yesterday were in renewal of. Have you brought them or a record of them?

A. I have what I believe is a correct record of them here.

Q. And you have made that out from these books?

A. Yes, sir.

Q. Let me look at them, please.

(Testimony of Edward C. Smith.)

(The witness thereupon handed a paper to Mr. Gordon.)

Q. This is a correct statement made from these books? A. Just as near as I can make it.

Q. Did you make that out yourself?

A. No, sir; we worked together.

Q. Who wrote that out? Did you write that out?
[1798—1468] A. No; the bookkeeper.

Q. That is made from these books, is it?

A. Yes, sir.

Cross-examination.

(By Mr. BABB.)

Q. This note for \$9,500.00, given by W. F. Kettenbach, which you referred to, I will ask you to state whether you have checked out in detail the origins of that note. A. I found a statement.

Q. Aside from the statement you referred to have you made an investigation to trace the origin of that?
A. No.

Q. You haven't had an opportunity to do so, have you, since the matter came up? A. No, sir.

Q. From that statement you find you assume that there was prior indebtedness that that was a renewal of, either wholly or in part? A. Yes, sir.

Q. That statement was pinned to this note, was it not, or filed with it, was it not?

A. It was in the files.

Q. With the note?

A. In the same file, yes, sir.

Q. You were laboring under the preliminary impression that the note was in some way connected

(Testimony of Edward C. Smith.)

with the purchase W. F. Kettenbach made of property from the Colby, Coryell, Howell Lumber Company, were you not? A. Yes, sir.

Q. That purchase he made was made about March, 1909, was it not? A. I believe so. [1799—1469]

Q. So if your impression was correct as to the connection between this note and that purchase it is possible that the indebtedness was created at the time of the purchase?

A. It is possible, yes, sir.

Q. The items on the statement you have handed in here, which you say you found filed with that note, appear to be items of prior existing indebtedness from W. F. Kettenbach?

A. Appear,—I should judge so from the appearance of the statement, yes, sir.

Q. And the balance of that indebtedness is shown by this statement to have been precisely the amount of this note? A. Yes, sir.

Q. Now, you were asked this morning a leading question whether that note had any connection with the trust instrument of July, 1907, that was offered in evidence here, evidencing the trusts on which the Idaho Trust Company held the property conveyed to it by deed of July 6, 1907. I will ask you to state what bearing that trust instrument has on this note of ninety-five hundred and some dollars?

A. Well, I believe it secures it.

Q. It is a blanket security for all the indebtedness then existing or thereafter incurred?

A. Yes, sir.

(Testimony of Edward C. Smith.)

Q. Your statement in your testimony in chief that the note had nothing to do with these transactions here was that your impression was that it pertained to the Colby, Coryell & Howell Lumber Company purchase and not to any of the transactions involved in this case? A. Yes, sir.

Q. And that was the reason you was answering it that way? A. Yes, sir.

Q. You stated that you knew in a general way about the convictions of W. F. Kettenbach and possibly some others, Dwyer, in the [1800—1470] United States District Court in this state some few years ago. I will ask you to state whether you ever saw any of those indictments on which they were convicted. A. I never did.

Q. Do you, or did you at any time know what particular entries were involved in the charges made, land entries involved in the charges made in those indictments?

A. I don't remember that I ever did, although I have heard a good deal about them; possibly I have.

Q. Could you ever at any time, if you had been interrogated, have answered to what particular entry or entries were involved in the charges made?

A. I don't suppose I ever could.

Q. You did not know then, at the time of the delivery of this deed of July 6th, 1907, to Idaho Trust Company, conveying real estate, that any of the properties included in that deed were properties that were involved in the charges made in any of those indictments referred to? A. No, sir.

(Testimony of Edward C. Smith.)

Q. You had never heard that any of those properties were so involved? A. No, sir.

Q. In fact, it was your impression that those properties were not involved, was it not?

A. Yes, sir.

Q. That was your understanding? A. Yes, sir.

Q. This indebtedness you have testified about here, the note you have identified, the account you have referred to, I will ask you to state whether that was real indebtedness, representing an actual money obligation, or whether those papers were simply mere forms? [1801—1471] A. Those?

Q. All these notes and evidences of indebtedness.

A. Well, they were actual indebtedness.

Q. Represented actual transfers of money?

A. Or renewals.

Q. Loans and renewals of loans? A. Yes, sir.

Q. I will ask you to examine and state what, if any, loan the Idaho Trust Company made to George H. Kester at or about the time of the execution of said conveyance to Idaho Trust Company by Kettenbach and Kester July 6, 1907.

A. If I can get those statements—

Q. And the trust agreement evidencing the trust on which that conveyance was held. You may state in the same connection and answer in the same question, what prior indebtedness the said George H. Kester was owing to Idaho Trust Company at that time, if any. The question is prior to the execution of those instruments, if any.

A. I don't believe I can give you that, Mr. Babb, at this time.

(Testimony of Edward C. Smith.)

Q. I would like to have you look that up and answer as to that, the indebtedness existing at the time of the execution of those instruments of George H. Kester and the indebtedness incurred on or about the time of the execution of those instruments. Explain what the consideration was, what it consisted of, and the nature of it.

A. On June 26, 1907, Kester owed a note of \$5,000.00.

Q. What date was that note?

A. June 26, 1907.

Q. When was it payable, and the rate of interest?

A. It was dated June 26, 1907, demand note, eight per cent. interest, \$5,000.00.

Q. What was the consideration of that? [1802—1472]

A. \$5,000.00 was the consideration.

Q. What was it, a loan or a sale? A. A loan.

Q. It was actually made, was it, a loan of that amount of money actually made to him?

A. It was either made to him, or this was a renewal of another note.

Q. On which an actual loan was made?

A. Yes, sir.

Q. What indebtedness, if any, did he incur to Idaho Trust Company right soon thereafter?

A. On July 9, 1907, he gave the Idaho Trust Company a note for \$25,000.00 at eight per cent. interest.

Q. Payable when?

A. Payable January 9th, 1908.

Q. What was the consideration of that note?

(Testimony of Edward C. Smith.)

A. \$25,000.00.

Q. Well, what made up that note? Did that take up that \$5,000.00 note?

A. I believe so. It was given the same date the other one was marked paid.

Mr. GORDON.—Wasn't that other note July 26, 1907?

Mr. BABB.—June 26th.

Q. Then, the additional \$20,000.00 and this \$5,000.00 note, what was that, what did that consist of, what was the consideration?

A. I haven't a memorandum of what that consisted of.

Q. Have you anything here from which you can ascertain?

A. No, sir; I don't believe I have. I am satisfied, though, that that \$5,000.00 was included in this \$25,000.00 note. [1803—1473]

Q. Then, what was the balance of that \$25,000.00 note? What made it up, besides the \$5,000.00 that was renewed?

(No answer.)

Q. I will ask you to state how long will it take you to investigate and find out about that.

A. Perhaps I can tell here in a few minutes; I will see.

Q. Have you got the minute-book here that you had here last night?

A. Yes, sir; I will get it.

Q. You go on, and I will examine this. Look at the minutes of the meeting of the board of directors

(Testimony of Edward C. Smith.)

of Idaho Trust Company, September 9th, 1907, in which is recorded in full the trust instrument of July 6th, 1907, and state what loans are referred to in the following entry: "Upon motion of O. A. Kjos, seconded, put to a vote and carried, a loan of \$25,000.00 to George H. Kester was approved." What loan was that?

A. Mr. Babb, that is the same loan, I think, without any doubt.

Q. The same as the \$25,000.00 note of July 9th, 1907?

A. Yes, sir; on July 8th, 1907, we had a meeting of the directors, and that note was made on the day following, July 9th, and we didn't have another meeting of the directors until September 9th, and consequently that is the same one.

Q. And that refers to the note for \$25,000.00 of July 9th, 1907? A. Yes, sir.

Q. And that note included in it a renewal of a prior \$5,000.00 note? A. I believe so.

Q. And then the balance remaining, \$20,000.00, what was that? Was that a present advance made at that time?

A. It was an advance, yes, sir.

Q. It wasn't prior? [1804—1474]

A. Well, I don't know, Mr. Babb; I can't say.

Q. You haven't looked it up? A. No, sir.

Q. I wish you would verify that there so that we can dispose of that while we are here.

A. I find here on the same date a demand certificate account, a large amount, which would signify

(Testimony of Edward C. Smith.)

that there was some large transaction that day, and I am satisfied that in addition to that \$5,000.00 we issued a demand certificate which was for the balance.

Q. What balance, what amount?

A. Well, I haven't got the detailed amount here.

Q. What did you mean by balance?

A. The balance of the note over and above the \$5,000.00.

Q. That was for \$20,000.00? A. Yes, sir.

Q. What was it they did about the \$20,000.00?

A. Issued our demand certificate of deposit.

Q. To whom?

A. Well, I haven't got the detailed record of it, Mr. Babb.

Q. You issued one for that amount but you haven't got the record there to show to whom?

A. Yes, sir.

Q. Well, you have got the book down to the office that will show that? A. Yes, sir.

Q. You have got a machine out here?

A. Yes, sir.

Q. It won't take you but five minutes to go down there and get it, will it?

A. No, sir. [1805—1475]

Mr. GORDON.—Oh, put that in some other time. What's the use of putting your case in this way?

Mr. BABB.—I would like to have that.

Mr. GORDON.—Well, he is the secretary of one of the defendants whom you represent, and if you want to put your case in this way I will ask to have it show on the record that it isn't proper cross-ex-

(Testimony of Edward C. Smith.)

amination and ask that the defense put their case in at their own expense.

Mr. BABB.—He was asked about it in chief.

Mr. GORDON.—I asked him nothing about the matter he is referring to there in chief. I asked him about three notes, and the renewal of them, and he couldn't tell me, and he can't tell you.

Mr. BABB.—Couldn't you phone somebody and have them bring them up? Here is Mr. Turnbull.

WITNESS.—He would have to walk down.

Mr. BABB.—Well, he would be back before we get through. Let him go.

WITNESS.—I have no doubt but what we can locate that by spending time enough.

Mr. BABB.—Yes, but we want to do it now. Where is that list of stockholders of the Idaho Trust Company that was handed in here this morning?

Q. If I understood your direct examination, you stated that a certain number of shares of the Lewiston National Bank were transferred to Idaho Trust Company? A. Yes, sir.

Q. Something like 900 or 910?

A. 900 shares.

Q. The transfer of those shares to Idaho Trust Company was made by certain shareholders of the Lewiston National Bank? [1806—1476]

A. Yes, sir.

Q. Instead of Idaho Trust Company itself, as a corporate entity, paying the share holders of the Lewiston National Bank for making those transfers to it, the share holders of Idaho Trust Company

(Testimony of Edward C. Smith.)

paid the Lewiston National Bank share holders for the transfers they made to Idaho Trust Company by transferring to the share holders of the Lewiston National Bank a certain portion of the stock held by the share holders of Idaho Trust Company?

A. Yes, sir.

Q. That was the nature of that transaction, was it not, briefly stated? A. Yes, sir.

Q. Idaho Trust Company didn't increase its capital stock, and issued some stock to the share holders of the Lewiston National Bank? A. No.

Q. Nor did it issue any stock to them that it owned? A. No, sir.

Q. It was an issue for the purpose of getting the title of the stock of the Lewiston National Bank transferred to Idaho Trust Company?

A. Yes, sir.

Q. Now, you stated that the share holders of Idaho Trust Company decreased their holdings.

A. Yes, sir.

Q. Sufficiently to compensate the share holders of the Lewiston National Bank for the transfer they made to the Idaho Trust Company? A. Yes, sir.

Q. You were asked then how it happened that it shows on this list of share holdings in the Idaho Trust Company that the share holdings of some of the shareholders increased by reason of that transaction rather than decreased? [1807—1477]

A. Yes, sir.

Q. As you had stated? A. Yes, sir.

Q. Now, how does it happen that some of those

(Testimony of Edward C. Smith.)

holdings increased? Is it not a fact that some of these shareholders in Idaho Trust Company were also stockholders in the Lewiston National Bank?

A. Yes, sir.

Q. And entitled therefore to a transfer of additional Idaho Trust Company stock?

A. Yes, sir.

Q. Is not that the way in which some of these holdings in Idaho Trust Company were increased rather than decreased by that transaction?

A. Yes, sir.

Q. At any rate the transaction was carried through and closed up in the way I have briefly described here?

A. Yes, sir.

Q. Between the shareholders of the two institutions?

A. Yes, sir.

Q. Now, I notice this list you handed in here of stock ownership Idaho Trust Company, entitled that, one column is headed before January 7, 1908, is it?

A. Yes, sir.

Q. And the other is after January 7, 1908? Is that it?

A. Well, on.

Mr. GORDON.—He changed it from “after” to “on.”

WITNESS.—I changed it from “after” to “on.”

Mr. BABB.—Q. This list you brought in here this morning was made up [1808—1478] pretty hastily, was it not?

A. Yes, sir.

Q. Could you be assured that that is absolutely correct in detail?

A. I think so.

Q. You think it is?

A. It proves out.

(Testimony of Edward C. Smith.)

Q. I didn't know whether you had had time to verify it sufficiently. You don't assume to state, though, that that represents the present holding—

A. Oh, no.

Q. Of stock in the Idaho Trust Company?

A. No, sir.

Q. What was the object of that arrangement for transferring shares between the shareholders of those two corporations?

A. To effect a consolidation of the two institutions.

Q. What was the object of doing that, I say?

A. For economy of operation and convenience generally in handling the business, the advantages that would go with a consolidation, the added advantage of a National Bank and also a Trust Company.

Q. With practically the expense of management of one institution instead of the expense of two?

A. Practically that saving, yes, sir.

Q. Now, there may have been other transactions about the time this arrangement was perfected that affected in some respects these changes in ownerships other than this particular transaction of transfer itself, might there or might there not?

A. I don't think there was anything at that time.

Q. You don't remember now whether there was or not? A. No, sir.

Q. You haven't investigated to find out whether there was or not [1809—1479] other transactions?

A. No, sir.

Q. Some person may or may not actually have ac-

(Testimony of Edward C. Smith.)

quired some additional shares at that time, so far as you can state now, otherwise than by reason of this transaction of transfer? You haven't investigated since this came up here to find out whether that is so or not, have you? A. No, sir.

Mr. BABB.—That is all.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Smith, you made the assertion that those notes represented a real indebtedness. Do you know what they represented, any of them, other than that the notes are found in the files of your company?

A. I know we don't make loans unless we get—unless it is for indebtedness.

Q. That is not what I am asking you. I mean, did you have anything to do personally with any loan that has been referred to here?

A. Oh, I think Mr. Kettenbach had the handling, did the detail work upon them.

Q. And you knew nothing about them?

A. Well, I didn't see that—

Q. Were you consulted about them?

(No answer.)

Q. You know whether you were or not.

A. No, I can't remember about that.

Q. Now, you stated that you couldn't tell of a piece of property that was involved or mentioned in any of the indictments, did you not?

A. I believe so.

Q. Hadn't you ever heard the claims and entries

(Testimony of Edward C. Smith.)

that had been [1810—1480] talked over in those indictments?

A. I certainly heard a good deal of talk about them.

Q. Didn't you know who the witnesses were, a number of them, from Lewiston here?

A. I knew some of the witnesses here; yes, sir.

Q. Didn't you know that their claims and entries were involved in those indictments?

A. I had no way of connecting their claims up with any claims that were included in this trust agreement.

Q. And you didn't know whether they were included in the trust agreement or not, did you?

A. I certainly thought they were not included in it.

Q. Answer my question, please. You didn't know whether they were or not, did you? (No answer.)

Q. Can't you answer?

A. (Pause.) I don't remember that I knew.

Q. I say you don't know whether they were or not?

(No answer.)

Q. You surely can answer that?

A. It is pretty hard to answer the question the way you are putting it. We certainly felt that there was no claims involved in that trust agreement.

Q. Did you ever make any inquiry to find out whether they were or not?

A. I never did personally, no, sir.

Q. Is there any claim mentioned in that trust agreement or any description of any property in that trust agreement?

A. Well, there is a deed that goes with it that there is a description in. [1811—1481]

(Testimony of Edward C. Smith.)

Q. You had nothing to do with the making of that trust agreement, did you?

A. I believe Mr. Kettenbach made it.

Q. Where did you get the information that none of the entries that were involved in any of the criminal prosecutions were not in that trust agreement, deed?

(No answer.)

Q. Please answer.

A. Well, we talked the matter over, and it was pretty well—pretty generally understood among us, among our crowd, that they were not involved in it.

Q. Who did you talk it over with?

A. I think Mr. Frank Kettenbach.

Q. Did he tell you there weren't any of them involved in there? A. I believe he did.

Q. Have you any personal knowledge what any note that you have mentioned was given to secure, whether it was old indebtedness or new indebtedness, or one you had taken over from the Lewiston National Bank, or some outside transaction?

A. I have only records to show.

Q. I asked you if you had any personal knowledge.

A. No, I can't say that I have.

Q. You know nothing personally about the transactions? A. Only from records.

Q. And your records only show that one day a note was paid and the same day, if another note was given, you would assume that it was given as a renewal of that, is that all? A. Yes, sir.

Q. Now, this \$20,000.00 note that you have referred to here in this resolution. You don't know what that

(Testimony of Edward C. Smith.)

note was given for, do you? You don't know whether it was some old indebtedness of the Lewiston [1812—1482] National Bank, or whether it was a new loan, or whether it was to take up a number of small notes or not, do you?

A. No, I don't believe I do. I have been looking to try to find that information for you.

Q. And there is nothing in your books to show what that was for, other than that at the same time a note was given, is that correct?

A. Well, there is a possibility of our having something to show what it was given for; sometimes we make a notation of renewal, but not always.

Q. As I understand, this consolidation was not an increase of the capital stock of the Idaho Trust Company? A. No, sir.

Q. But merely an increase of the value of the stock, is that right? A. Yes, sir.

Q. You spoke about the Trust Company issuing a demand certificate of deposit on the 6th or 7th of July, I think it was, in the sum of \$20,000.00 or \$25,000.00. Which was correct?

A. If you will let me refer to that—

Q. Yes. Do you know to whom that was issued?

Mr. BABB.—He refers to that (handing witness book); I don't know whether it will help you any.

A. Well, we are not any better off than we were before here on this.

Mr. GORDON.—Did you answer?

WITNESS.—No. Our certificate of deposit book shows that we paid the Lewiston National Bank, on

(Testimony of Edward C. Smith.)

the 9th day of July, \$22,335.56, which is marked clear. That means that we paid our balance that day balance clear. [1813—1483]

Q. Does that mean that George H. Kester paid for a certificate of deposit? A. No, not necessarily.

Q. You spoke of a resolution referring to a loan, approving a loan of George H. Kester's. You do not know whether that approval referred to this \$25,000.00 loan of George H. Kester's, or some other, other than that just about that time a loan was consummated?

A. No; it referred to that particular loan.

Q. How do you know?

A. Why, I know it from the records.

Q. Didn't you say here, in response to Mr. Babb's question, that you didn't have any distinct recollection of it other than that it must have been?

A. Well, I say now that it must have been.

Q. But you have no individual recollection of the transaction at all?

A. Oh, I can't remember the transaction; no, sir.

Mr. GORDON.—That is all.

Recross-examination.

(By Mr. BABB.)

Q. You haven't been able, since I last made inquiry of you, to get the records which would enable you to testify concerning the \$20,000.00 of that \$25,000.00 note given by Kester, of July 9th, 1907, have you? A. Not positively.

Q. I will ask you to investigate that matter, and you may be called again some time for evidence in the

(Testimony of Edward C. Smith.)

future in this case, or you may not, so that you can testify if you are so called.

A. I am satisfied that I can furnish it. [1814—1484]

Q. You think you can find it, do you?

A. Yes, sir, I do.

Q. All right. I will ask you to look it up and I will call you some other time. That is all.

Mr. GORDON.—Now, we have put in all that we have here, or that we can get here at this time, with the exception of the three or four witnesses that I gave Mr. Tannahill the names of. One of them was Lon. Bishop, and one was Charles Smith, one was Theo. Fohl, Charles Jansen, James C. Evans, and S. P. Fitzgerald, and I assume that it may be agreed between us that after we have taken all our other testimony around the circuit, that when the defense gets ready to put in its testimony that we be notified of when that day will be, and we will put in this testimony on the day before. And I assume that they will also let me put in any other little thing that I may have overlooked, any minor fact, at the same time. In other words, when we close at Boise I am going to rest my case with the exception of the one day that I will have here for just such matters as we have referred to.

Mr. BABB.—Yes.

Mr. TANNAHILL.—Yes.

The SPECIAL EXAMINER.—That will conclude the hearing here for the present, then.

The hearing was thereupon adjourned at Lewiston,

Idaho, to be resumed at Spokane, Washington, at ten o'clock A. M., Monday, September 12, 1910, in the Grand Jury room of the Government building at said Spokane, State of Washington. [1815—1485]

**[Proceedings Had at Spokane, Washington,
September 12, 1910.]**

On Monday, September 12, 1910, at 10 o'clock A. M., the hearing was resumed, in the Grand Jury room of the Government Building at Spokane, Washington, pursuant to adjournment.

By agreement of counsel, an adjournment was thereupon taken until 2 o'clock P. M.

At 2 o'clock P. M. the hearing was resumed, and the following proceedings were had, to wit:

It is stipulated by and between the parties hereto, in open court, that Edward M. Lewis, of Lewiston, Idaho, made a timber and stone land filing in the land office at Lewiston, Idaho, on the 26th day of October, 1904, and filed his sworn statement and other filing papers on that date, for the north half of the northeast quarter and the southwest quarter of the northeast quarter of section 29, township 39 north of range 5 east, Boise meridian; that the said Edward M. Lewis made his final proof on said entry on January 20, 1905, and was cross-examined at that time, and that the receiver's receipt and register's certificate were issued to the said Edward M. Lewis for the said described tract of land on January 20, 1905.

[Testimony of Edward M. Lewis, for Complainant.]

EDWARD M. LEWIS, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Edward M. Lewis?

A. Yes, sir.

Q. Where do you reside, Mr. Lewis? [1816—1486] A. I reside at Spokane.

Q. Where did you reside in October, 1904?

A. Lewiston.

Q. Idaho? A. Yes, sir.

Q. What was your occupation at that time?

A. Common laborer.

Q. What was your salary at that time?

A. Well, about two and a half a day.

Q. Was it always that much, or sometimes less?

A. Well, it always was city work, you know.

Q. Are you a brother of Hiram F. Lewis?

A. Yes, sir.

Q. Do you remember of taking up a timber claim for the north half of the northeast quarter and the southwest quarter of the northeast quarter of section 29, in township 39 north of range 5 east, Boise meridian, on October 26, 1904?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to taking up a timber claim, on the ground that it is incompetent, irrelevant and immaterial, no entry of the witness being involved in any of these proceedings.

(Testimony of Edward M. Lewis.)

Mr. GORDON.—Q. Do you remember taking up a claim on that date, of that piece of property?

A. Yes, sir.

Q. Now, will you state whether or not you had an arrangement with anybody for the taking up of that claim? If so—

Mr. TANNAHILL.—It is understood that the defendants' objection goes to all of the evidence of the witness relative to his taking up a timber claim, without the necessity of repeating it. [1817—1487]

The SPECIAL EXAMINER.—Yes; the stenographer will just note that.

Mr. GORDON.—Q. State all you can remember in connection with it, Mr. Lewis.

A. I don't know anything that transpired only between my brother and myself.

Q. That is Hiram Lewis? A. Yes.

Q. Now, state what transpired between you two.

Mr. TANNAHILL.—The defendants severally object to any conversation between the witness and his brother, upon the ground that it was not in the presence of either of the defendants, and upon the ground that it is hearsay, and the defendants cannot be bound by any statement of the witness relative to what his brother may have said, and especially in view of the fact that his brother has testified that there was no prior agreement between him and either of the defendants, and nothing wrong in regard to his acquiring timber and stone land claims.

A. Well, he approached me and told me I had a chance to take up a timber claim, and told me who I

(Testimony of Edward M. Lewis.)

was to go to the timber with, and there was nothing said in regard to what I was to do, or anything, with the claim at the time.

Mr. GORDON.—Q. Now, were you working in Lewiston at that time?

A. Yes—well, I was working down about two miles from Lewiston, right down the river.

Q. Did this conversation that you refer to with your brother take place in Lewiston, or down the river?

A. Down the river; he came down there for me.

Q. Did you have the money with which to take up a timber claim then? A. No, sir. [1818—1488]

Q. State, as near as you can, the first thing your brother said to you relative to this timber claim; I can't, of course, expect you to repeat the words, but just as near as you can remember at this time.

Mr. TANNAHILL.—Allow us the same objection.

A. Well, he told me that I was to take up this timber claim, and he said that he wanted me to go on a certain date, that Dwyer was going up then, and I was to go with him, and he told me to leave everything with him, that he would see that it was all right, and he never said anything, though, in regard as to what I was to do or anything about it, only go up there and get the claim, that I had a chance to get me a claim.

Q. Now, how long was this before the date was set for you to go to view the claim?

A. It was only about two days.

Q. And did you go on that day, or was there a delay? A. No; we went that day.

(Testimony of Edward M. Lewis.)

Q. Did he give you instructions where to go and who to see?

A. No, nothing; only he told me to go to Dwyer.

Q. Did you know Dwyer at that time? A. No.

Q. What Dwyer is this? A. William Dwyer.

Q. Where did you find Mr. Dwyer?

A. There in Lewiston.

Q. Did you go and look him up?

A. My brother introduced me to him.

Q. What part of Lewiston did you meet him?

A. I met him there at the Raymond House.

Q. Did you and Mr. Dwyer go off together?

A. No, sir. [1819—1489]

Q. Now, state what happened.

A. Well, I went right up to the house; this was in the afternoon about four o'clock that he came down there after me, and after I had seen Mr. Dwyer he said we would be ready to take the train that morning.

Q. The next morning?

A. Yes; and go to Greer, and from there we had to go with saddle-horses to where the claim was. And so we went that morning as far as Greer and took saddle-horses to go from there on in.

Q. How many days were you away from Lewiston to view this land?

A. I believe we was gone three days altogether.

Q. Did you pay any of the expense of that trip?

A. No, sir.

Q. Who paid the expenses? A. Mr. Dwyer.

Q. And how long after you returned to Lewiston,

(Testimony of Edward M. Lewis.)

after going to the land, did you make your filing?

A. Well, I can't say just how long it was; it wasn't only a few days, though.

Q. Where did you get your filing papers?

A. In the land office,—Mr. Mullen's office.

Q. Who was Mr. Mullen? Is he an attorney there at Lewiston? A. Yes; he was an attorney.

Q. How did you happen to go to Mr. Mullen's office?

A. I was requested to go there by my brother.

Q. Did you get your filing papers made out there?

A. Yes.

Q. Did you give Mr. Mullen the description of the land?

A. No; he already had the description of it.

Q. Was anyone there besides yourself? [1820—1490] A. No, sir.

Q. Do you remember who named the witnesses that you were to have at final proof?

A. Why, Mr. Dwyer, I think, named the witnesses.

Q. Did you pay Mr. Mullen a fee for his services in preparing those papers? A. No, sir.

Q. Did you go to the land office alone to file them, or with some one?

A. No, sir; I went there with Mr. Mullen.

Q. Did you pay a filing fee at the land office?

A. Yes, sir.

Q. Where did you get the money with which to pay that? A. I got it from my brother.

Q. Do you remember how much it was you paid?

A. I don't just remember now.

(Testimony of Edward M. Lewis.)

Q. Now, before you filed was anything said to anyone as to where you would get the money to take up this claim?

A. No, there wasn't, any more than my brother said he would see that I got the money.

Q. Then do you remember the making of your final proof? A. Yes, sir.

Q. From whom did you get the money to make your proof? A. Also from my brother.

Q. How much did you get from him, as near as you can remember?

A. About \$40.00, I think, was what he gave me.

Q. Where did you get the rest of it?

A. The rest I got over at the bank, the Idaho Trust.

Q. Did you have the money in the bank? [1821—1491] A. No, sir.

Q. How did you get it out of the Idaho Trust Company then?

A. I don't know; I got it through instructions from my brother.

Q. What did he tell you to do?

A. He told me to go over to the bank and get the rest of the money.

Q. What did you have?

A. A check—he issued a check on the bank.

Q. Was it his check? A. Yes, sir.

Q. Do you know who put that money there?

A. No, sir.

Q. Did you pay a location fee? A. No, sir.

Q. Did you pay for a relinquishment of the land that you filed on? A. No, sir.

(Testimony of Edward M. Lewis.)

Q. Now, between the time that you filed and the time you made proof, will you state whether or not there was a contest filed against your timber and stone entry?

A. No; the contest was filed after I had proved up on it.

Q. It was? A. Yes.

Q. And you took the money that you got from your brother on the check, and the \$40.00 that he gave you, and made your proof? A. Yes, sir.

Q. Did you have any of your own money?

A. No, sir.

Q. State whether or not you put a dollar of your own money into that transaction. A. I did not.

Q. Did you give a note for this money you got from your brother? A. No, sir. [1822—1492]

Q. Did you ever pay any interest on it?

A. No, sir.

Q. Ever promise him when you would pay it?

A. No, sir.

Q. Was anything ever said about returning that money? A. No, sir.

Q. Who notified you of the contest of your timber claim? A. Mr. Dwyer.

Q. Now, state what he said about it.

A. Well, he saw me in town there one day and told me that a party had filed a contest on forty acres of my timber claim, and wanted me to fight it, said it was worth looking after.

Q. Did he give you any instructions or directions what to do?

(Testimony of Edward M. Lewis.)

A. No; he told me he would go and hire a lawyer—he said Mr. Mullen would take the case for me, he thought, for about \$30.00.

Q. Did you follow his instructions?

A. Yes, sir.

Q. Did you go to see Mr. Mullen? A. Yes, sir.

Q. Did he represent you at the contest?

A. Yes, sir.

Q. Do you know whether or not the contestant was successful or whether you won out on it?

A. I think he won out; it was decided in his favor.

Q. And who paid Mr. Mullen?

A. I paid Mr. Mullen out of my own pocket.

Q. Were you ever reimbursed by anyone for that money that you paid Mr. Mullen?

A. Yes, sir. [1823—1493]

Q. State how that transaction occurred.

A. Well, I told my brother about it, and asked him how it come about that a contest had been filed on the claim and I had to fight it and pay out of my own pocket, and he said he would see that I got it back all right.

Q. Did you get it back? A. Yes, sir.

Q. From him? A. Yes, sir.

Q. How long after you paid the fee?

A. It was only about a week.

Q. Do you know where he got the money from?

A. No, sir.

Q. Now, did you ever dispose of this property?

A. No, sir.

Q. Have you got it yet? A. No, sir.

(Testimony of Edward M. Lewis.)

Q. Well, what did you do with the property—what became of it? A. I deeded it over to my brother.

Q. State how that transaction came about.

A. Well, my brother—he told me he wanted me to go down town with him one day at Lewiston there to deed that place over to him, the timber claim, and we went up there in an attorney's office—I just forget who it was now—and made out the deed to the place, and I turned it over to my brother.

Q. Was anything said between you and your brother further about turning it over? A. No, sir.

Q. Did he tell you whether or not it was your property or whether it was somebody else's?
[1824—1494]

A. No; he told me it didn't belong to me; that I had no right to sell it or anything.

Q. Did he tell you to whom it belonged?

A. No, sir.

Q. Mention anybody else's name? Did he tell you to whom did it belong? State all you can that he told you at that time.

A. He told me, I am almost sure, that it belonged to Mr. Dwyer and that I had no right to it whatever.

Q. Did he mention anybody else's name besides Mr. Dwyer's?

A. I don't remember just at the time, but I know Mr. Dwyer, because he said I had no right to the property.

Q. Did he say whether or not Mr. Dwyer was interested with somebody else in that claim?

A. No; he didn't say anything in regard to that.

(Testimony of Edward M. Lewis.)

Q. Did he say that anybody else had an interest in that claim? A. No.

Q. Didn't mention anybody else's name?

A. No.

Q. Did he at any other time? A. Yes.

Q. When was that?

A. It was shortly after; I was talking with him and asked him if I was going to get anything else out of the timber claim, and he said no, that I had got all that was coming to me, said I had got more now than he had; he said they was his claims and he turned them over to Kester and Kettenbach and Mr. Dwyer.

Q. How much did you get out of your claim?

A. I got \$125.00.

Q. When did you get that? [1825—1495]

A. I got that on the 25th or 26th day of January, I think it was.

Q. What year?

A. Well, it was 19—I don't know now just when—04, or something like that; I know it was just two or three days before I was married.

Q. Do you remember whether it was before you made your proof, or after you made your proof?

A. It was after I made my proof.

Q. State where you got that, and from whom you received it, and what was said when you was given that money.

A. Well, I asked my brother—he told me that after I had made final proof I would get a certain piece of money out of it, and I told him that the way I was situated I would like to have it as soon as I could;

(Testimony of Edward M. Lewis.)

I was going to get married and furnish up my house, so he said he would get it for me, and the next day, I think it was, he brought it up and give it to me.

Q. How long after that was it that you made the deed? A. Oh, it was I guess six months after.

Q. Now, when you made your final proof and paid your money in the land office did they give you a final receipt for that? A. Yes, sir.

Q. What did you do with that?

A. I kept it until I deeded the property over to my brother.

Q. Then you gave that to him?

A. Then I gave it to him.

Q. Now, when you first met Mr. Dwyer, the first day you met Mr. Dwyer, before you started to the timber land, did you have any talk with him about taking up this timber claim?

A. No, sir; there was nothing said, I don't believe, at all until we got to the timber. [1826—1496]

Q. Are you sure that Mr. Dwyer didn't ask you if you didn't want to take up a timber claim?

A. No, sir.

Q. Is that your signature to that paper, Mr. Lewis? (Showing paper to witness.)

A. Yes, sir.

Q. Did you swear to that before Mr. O'Fallon?

A. Yes, sir.

Q. Now, will you look down there at the bottom of the first page and read those questions over and see whether or not that refreshes your recollection as to whether or not you had a conversation with Mr.

(Testimony of Edward M. Lewis.)

Dwyer relative to taking up a timber claim? (Handing paper to witness.) A. Yes.

Q. Did you make those statements?

A. Yes, I did.

Q. Were they the truth?

Mr. TANNAHILL.—We object to that, upon the ground that the document is the best evidence, and upon the further ground that it is an *ex parte* statement purporting to have been drawn up by some special agent, not in the presence of any of the defendants, and it is hard to tell what it might contain; these special agents have had witnesses sign everything they might write up for them. It is not proper to use these *ex parte* statements and make evidence of them.

Mr. GORDON.—Q. Do you remember, on the 31st of October, 1905, having talked with Mr. O'Fallon, Special Inspector of the land office?

Mr. TANNAHILL.—The same objection.

Mr. GORDON.—Q. The date you swore to this affidavit? A. I don't remember. [1827—1497]

Q. You remember talking to Mr. O'Fallon, don't you? A. (Pause.) Oh, that there, you mean?

Q. Yes. A. Yes; oh, yes.

Q. That was the gentleman that you swore to this before? A. Yes, sir.

Q. Now, do you remember him asking you: "Are you the same Edward M. Lewis that, on the 26th of October, 1904, filed on the north half of the northeast quarter and the southwest quarter of the northeast quarter of section 29, township 39 north of range 5

(Testimony of Edward M. Lewis.)

east, Boise meridian?" And you answered: "Yes, sir." A. Yes, sir.

Mr. TANNAHILL.—The same objection, and on the ground that it is leading and suggestive, and tends to impeach the Government's own witness.

Mr. GORDON.—Q. Do you remember him asking you this question: "Who induced you to file upon this land?" And you answered: "Mr. Dwyer."

Mr. TANNAHILL.—The same objection.

A. Yes, sir.

Mr. GORDON.—Q. And was that the truth?

A. Yes, sir.

Q. Do you remember him asking you this question: "Had you known Dwyer previous to that time?" And you answered: "No, sir." Is that correct?

A. Yes, sir.

Q. "Where did he first mention the subject to you?

"A. There at Lewiston, on the street.

"Q. How did he broach the subject to you?
[1828—1498]

"A. Well, he asked me—wanted to know if I wanted a timber claim; he said he had a timber claim to locate."

Mr. TANNAHILL.—The same objection.

Mr. GORDON.—Q. Do you remember those questions and those answers being made by you?

A. Yes, sir.

Q. Were they true? A. Yes, sir.

Q. Now, do you remember whether or not the money that you received at the time you made your proof, from the Idaho Trust Company, whether you

(Testimony of Edward M. Lewis.)

got that on a check or whether somebody deposited that amount to your credit?

A. Well, I don't know, only that the check was made out to me and signed by my brother, that was all.

Q. Now, did I ask you who paid the filing fee in the land office, the first time you filed any papers?

A. Yes, I think you did.

Q. Do you remember what your answer was?

A. I paid it.

Q. From whom did you get the money?

A. I got the money from Mr. Dwyer for the filing fees.

Q. Was he at the land office at that time?

A. No.

Q. Or had you seen him just before you went to the land office? A. Yes, sir.

Q. Mr. Lewis, when you took up this timber claim did you have any understanding as to what you were going to get out of it, or what you were going to do with the property? A. No, sir; not at the time.

Q. Well, had your brother ever come to you before and offered to [1829—1499] put up the money for you to buy land? A. No, sir.

Q. What was it your intention of doing with that land?

A. Well, I supposed I was going to get it for my own use.

Q. Yes; but what were you going to use it for?

A. Going to use it for the timber that was on it.

Q. You expected to cut the timber on it?

(Testimony of Edward M. Lewis.)

A. Yes, sir; cut and sell it.

Q. And you thought your brother was coming to you to put up this money for you to get this timber just to cut it? A. Yes, sir.

Q. How does it happen that when he told you to deed it to him you did it without protest?

A. Well, he kind of got an idea, I guess, that I was going to try to sell the claim.

Q. Where did he get that idea?

A. I don't know, I am sure.

Q. Well, if it had been yours and he had no interest in it, what would have been the objection to your selling it?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. Well, I don't know, only one day at the house there, a friendly talk there, was talking to me, and he told me he wanted me to go down town and deed that timber claim over to him.

Q. He told you it wasn't yours, didn't he?

A. Yes, sir; he said I had no right to try to sell it, or anything else.

Q. Did you tell him you hadn't tried to sell it?

A. Yes, sir.

Q. Did you tell him that you owned it?

A. I told him I supposed I owned it.

Q. What did he say to you? [1830—1500]

A. He says, "You don't; it don't belong to you."

Q. Did he say who it did belong to?

A. He says, "It belongs to these other parties, Dwyer and Kettenbach."

Q. That was before you made the deed?

(Testimony of Edward M. Lewis.)

A. Yes, sir.

Q. When you were taking that up, didn't you know you were taking it up for them?

A. No, sir; not at the time.

Q. As soon as your brother told you it wasn't yours you deeded it to him, as he suggested?

A. Yes, sir; he said it was liable to get me in trouble.

Mr. GORDON.—Take the witness.

Cross-examination.

(By Mr. TANNAHILL.)

Q. You had previously received \$150.00 over and above the other money you had received, hadn't you, before your brother told you??

A. Yes, sir, I had received that money before.

Mr. GORDON.—\$150.00 or \$125.00?

WITNESS.—\$125.00, I think it was.

Mr. TANNAHILL.—Q. Was it \$150.00 that you received, instead of \$125.00?

A. Well, it might have been; I just couldn't say for sure.

Q. I will ask you if you know that your brother got \$250.00, and you got \$150.00 because your claim was a short claim, wasn't a full hundred and sixty acres?

A. I don't know in regards to what he got, I am sure; I never learned.

Q. But it was some time after you had received this \$150.00 that [1831—1501] your brother told you that the claim wasn't yours? A. Yes, sir.

(Testimony of Edward M. Lewis.)

Q. Now, didn't he tell you that he had sold the claim to Kester and Kettenbach?

A. I don't think that he told me that until after I deeded the place over to him, turned the claim over to him.

Q. When you deeded the claim over to him he told you that he had sold it to Kester and Kettenbach?

A. He told me I had sold it then and taken it in his hands.

Q. Now, you had no contract, understanding or agreement, either directly or indirectly, that you would convey that land to anyone before you made your final proof? A. No, sir, I did not.

Q. Either to your brother or anybody else?

A. No, sir.

Q. And your brother frequently loans you money and you loan him money, do you not?

A. Yes, sir.

Q. You often work together? A. Yes, sir.

Q. When this contest was filed, I will ask you if you remember of receiving a notice of that contest through the mail some way?

A. Yes, I received a notice the next day after Mr. Dwyer had notified me.

Q. Do you remember of testifying at the trial of Kester and Kettenbach and Dwyer, at Moscow, when they were convicted of conspiracy? You testified in that trial, did you not?

A. I think so, yes. [1832—1502]

Q. Now, to refresh your recollection, I will ask you (page 554):

(Testimony of Edward M. Lewis.)

“Q. Where were the contest papers first served on you and is that the way you found out the claim was contested?

“A. I think I received notifications of the contest through the mail, but as to who sent them, I don’t recollect.

“Q. Didn’t you take that notice of contest to Mr. Dwyer and tell him your place had been contested after you received it through the mail?

“A. Yes, sir.

“Q. And did not Mr. Dwyer tell you you had better employ an attorney and look after it, that it was worth looking after? A. Yes, sir.”

Does that refresh your recollection?

A. Yes, sir.

Q. And you received a notice of the contest through the mails, and then took it to Dwyer?

A. Yes, sir.

Q. And he told you that you had better employ an attorney and look after it, that it was worth it?

A. Yes, sir.

Q. And at the same time you considered the land yours? A. Yes, sir.

Q. That was after you had made final proof?

A. Yes, sir.

Q. Now, do you remember, Mr. Lewis, of testifying at the same trial (pages 546 and 547):

“Q. How did you come to take up a stone and timber claim, Mr. Lewis?

“A. By request of my brother.

“Q. Did your brother state to you anything which

(Testimony of Edward M. Lewis.)

Mr. Dwyer had said to him about taking up a timber claim, Mr. Dwyer or Mr. Kester? [1833—1503]

“A. Yes, sir.

“Q. Well, you took up a timber claim?

“A. Yes, sir.

“Q. Who attended to the business for you?

“A. My brother attended to most of it.

“Q. What part of it did you attend to?

“A. Just the filing, I think it was; the proving up.”

Now, you remember that it was your brother who first spoke to you about taking up a timber claim?

A. Yes, sir.

Q. Then when Mr. Dwyer and you talked about it was when your brother had told you to go to Mr. Dwyer? A. I don't just recollect now.

Q. That may have been the way of it?

A. Yes, it might have been the way; I can't recall it now.

Q. Anyway, after you had talked to your brother about taking up a timber claim he said something to you about going to Mr. Dwyer. Do you remember that you went to Mr. Dwyer then?

A. Yes, sir.

Q. And had a talk with him about going up and looking at the land?

A. Yes; he set a certain day to go up.

Q. Set a certain day to go up. Now, you don't remember now of having a conversation with Mr. Dwyer about it before you and your brother had that conversation, do you? A. No, I do not.

(Testimony of Edward M. Lewis.)

Q. Under what circumstances did you make this statement for Mr. O'Fallon?

A. Well, I don't know as there was anything in particular, only my brother and I was both in the office at the time, and they was [1834—1504] asking my brother questions, and finally him and my brother got in a kind of a little argument, and I guess he was kind of wrathful and was trying to scare my brother into testifying as to what he wanted him to testify to; he said if he didn't testify as he wanted him to there was a little institution over the way that would take care of him.

Q. What did he refer to?

A. I don't know; that is more than I can say. Him and my brother had that conversation. All that I knew was just what transpired between my brother and I; that was all the testimony I could give.

Mr. TANNAHILL.—Let me have that statement, Mr. Gordon.

Thereupon Mr. Gordon handed the statement to Mr. Tannahill.

Q. Now, when Mr. O'Fallon was telling your brother that if he didn't testify the way he wanted him to there was a little institution over the way that would take care of him, did O'Fallon tell him how he wanted him to testify?

A. He told him he just wanted him to answer the questions he asked him.

Q. Did he tell him how he wanted him to answer them? A. No, sir, not in particular.

(Testimony of Edward M. Lewis.)

Q. Now, I didn't understand who you said handed you the money to pay the filing fees? Did you say it was your brother that handed you that, or Mr. Dwyer? A. No, I think—I think—

Q. I see in this statement which you made for Mr. O'Fallon that you say:

“Q. Who paid the expenses of that trip?

“A. I don't know who it was.

“Q. Did Dwyer require you to pay any expenses?

“A. No, sir.

“Q. Who paid the filing fees in the land office?

[1835—1505]

“A. It was the same way; the money was given to me.

“Q. By whom?

“A. Handed to me by my brother.”

A. I know at the time the filing papers was handed to me it was Mr. Dwyer, because my brother wasn't there at the time, and Mr. Dwyer handed me the money there on the street when I went down that morning to file.

Q. Mr. Lewis, you wasn't positive about the year you received the \$150.00 or the year you made the deed. I will ask you if it wasn't about January, 1905, that you received the \$150.00?

Mr. GORDON.—There are two questions there together. Ask him about the year he got his money.

A. Yes, sir.

Mr. TANNAHILL.—Q. Then it was after that date that you made the deed, was it not?

A. Yes, sir.

(Testimony of Edward M. Lewis.)

Q. Deeded it to your brother? A. Yes, sir.

Q. And you proved up in October, 1904?

A. Yes, sir.

Q. October 26, 1904? A. Yes, sir.

Q. Did you give a mortgage on your place before you gave the deed? A. No, sir.

Q. I will ask you if you know anything about your brother trying to sell these claims to Joe Molloy and other parties before he sold them to Mr. Kester?

A. I don't know of any such transaction at all.

Q. He may have done that?

A. He might have, so far as I know; he never told me anything about it. [1836—1506]

Q. I will ask you if it wasn't your understanding that when he told you the claim wasn't yours, that he had sold it to someone after you had made your final proof? A. (Pause.) Yes.

Q. I believe you say that when you got that \$150.00 it was about the time you was going to get married, and you wanted some money to fix up your house, and you went to him and asked him if he couldn't get you some money on your claim; was that it?

A. No; I asked him if he knew where I could get some money from, and he said he would get me the money that was due on my claim.

Q. And he did get you the money? A. Yes, sir.

Q. I will ask you if you remember that afterwards you spoke to him about whether or not you would get anything more out of it, and he told you no, that

(Testimony of Edward M. Lewis.)

your claim was a short claim and he couldn't get anything more for you?

A. I know he told me that I wouldn't get any more for it, that I had got all that was due me; he didn't say anything in regard to it being a short claim or anything.

Q. Didn't he tell you he couldn't sell it for any more?

A. No, I don't remember that he said anything like that.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Lewis, in response to a question asked you a moment ago by counsel for the defense, you said that your brother said that he would get you the money that was due you on your claim. Is that correct? A. Yes, sir.

Q. Now, was that the first talk you had with him about selling your claim? [1837—1507]

A. Yes, sir.

Q. Now, do you remember whether or not he came to you at that time and told you that he would give you so much for your right?

A. No, he didn't say anything about that.

Q. Didn't he tell you he was giving you \$125.00 for your right?

A. He told me that was what I was to receive for my timber claim.

Q. That was the first talk you had with him about it? A. Yes, sir.

Q. And you took it and said nothing more about

(Testimony of Edward M. Lewis.)

it? A. Yes, sir.

Q. And you made the deed when he told you to?

A. When he asked me to.

Q. Referring to the conversation you had with Mr. O'Fallon that you have related here, and the statement that you have related that he would transport you to a little place across the way, what brought that about? Tell the whole transaction. Tell what you did and what your brother did.

A. I didn't do anything. I was just sitting there, and O'Fallon and my brother was talking.

Q. Where was this? A. This was at Moscow.

Q. In the courthouse?

A. Yes; in Mr. O'Fallon's office, and they got into some—he asked my brother some question, and I don't know—my brother—just now, whether he wouldn't answer it or told him he wouldn't answer it, or something like that—I don't know just which it was; and one word brought up another, and Mr. O'Fallon made that remark to him.

Q. Now, you and your brother had been summoned before the grand jury, had you not, at Moscow?

A. I don't just recollect whether it was the grand jury or for [1838—1508] the trials.

Q. You were there under Government subpoena?

A. Yes.

Q. And you and your brother had gone up there together? A. Yes, sir.

Q. And hadn't you and your brother made up your minds that you were going to stand together and

(Testimony of Edward M. Lewis.)

wouldn't give any more information than you had to?

A. Yes, I think that was the agreement with my brother, that is, he told me not to tell anything that would get me into trouble or anything like that.

Q. Was it only not to get you into trouble, or not to tell anything to get anybody else in trouble?

A. I don't remember whether he said anything about anybody else. He said to leave everything to him, and I just trusted to him; that was all I could do, as I was ignorant of the proceedings that I was up against.

Q. And you sat there and heard Mr. O'Fallon interrogate your brother, is that correct?

A. Yes, sir.

Q. And your brother declined to answer questions? A. Yes, sir.

Q. Was it then that Mr. O'Fallon told him that if he wouldn't answer questions that he would get into trouble, or something of that kind?

A. Yes, sir; that is just what he told him.

Q. Did Mr. O'Fallon or anybody else ask you to tell anything except the facts as they were?

A. No, sir.

Q. Did they indicate to you that they wanted you to tell anything but the truth? [1839—1509]

A. Nothing at all.

Q. Or your brother?

A. That is all they asked him to tell, was the truth.

Q. And he had declined to tell anything, had he?

A. I don't know what his statement was; he was

(Testimony of Edward M. Lewis.)

in there awhile before I was called in. I don't know what—there was a kind of argument at the time I went in.

Q. And they told you if you wouldn't answer questions you would get into trouble?

A. He told my brother that, and, of course, I was there and heard it, and it made me kind of leary.

Q. Then you and your brother told all you knew about it? A. Yes, sir.

Q. And all you told was the truth?

A. Yes, sir; as near as I knew how.

Q. As a matter of fact, weren't you and your brother trying to protect these defendants all you could?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. My brother might have been, but I wasn't at all. I hadn't said that I was going to try to sell them or anything, because my brother had done everything for me, and it was all kind of blank to me.

Q. Did your brother say he was going to protect them?

A. Why, he said he was going to testify to certain things. I told him I would have to testify to what I knew, that was all.

Q. Did he want you to testify to certain things that didn't accord with the facts?

A. Yes, two or three.

Q. That was your brother Hiram Lewis?

A. Yes, sir.

Mr. GORDON.—That is all. [1840—1510]

(Testimony of Edward M. Lewis.)

Recross-examination.

(By Mr. TANNAHILL.)

Q. You wasn't there all the time when O'Fallon and Goodwin was talking to your brother, was you?

A. Yes, I was in there after I was called in, just a few minutes after my brother was called in; I was called in and I was there until he dismissed us both that evening. It was along about four o'clock that evening when we was called in there.

Q. And he talked to your brother the next day, didn't he?

A. Yes; I wasn't in there the next day.

Q. And he talked to your brother the day following? A. I don't just remember.

Q. He had you both badly scared, didn't he?

A. Yes, sir.

Q. He threatened to indict you?

A. No, he didn't threaten me, but he threatened to indict my brother, that unless—that was the only remark I heard him make to my brother that day; I don't know what he said after that.

Q. Did you ever see the statement your brother made for him?

A. No; I don't remember that I did.

Redirect Examination

(By Mr. GORDON.)

Q. What were you scared about, Mr. Lewis?

A. Well, everything was kind of done so underhanded to me that I was ignorant of the facts as to what was transpiring.

Q. Who had done the underhanded business?

(Testimony of Edward M. Lewis.)

A. Well, my brother; he hadn't—I thought it was kind of bad of him going ahead and getting me into such things as that and not relating to me the substance as to how the things was coming out, to [1841—1511] think my brother would do that way, and, of course, there was nothing left for me to do but tell the truth and get out of it the best way I could.

Q. And you told the truth there the best you could? A. Yes, sir.

Q. And you have told the whole truth here, have you? A. Yes, sir.

Recross-examination.

(By Mr. TANNAHILL.)

Q. There wasn't anything wrong done by either you or your brother that you know of, was there?

A. Not at all.

Mr. TANNAHILL.—That is all. [1842—1512]

[Testimony of Mrs. Carrie D. Maris Rexford, for Complainant.]

Mrs. CARRIE D. MARIS REXFORD, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Carrie D. M. Rexford, are you?

A. Yes, sir; I am.

Q. And your maiden name was Carrie D. Maris?

A. Yes, sir.

Q. Where do you reside, Mrs. Rexford?

(Testimony of Mrs. Carrie D. Maris Rexford.)

A. I reside at Colfax.

Q. That is Colfax, Washington?

A. Colfax, Washington, yes, sir; Whitman County.

Q. And where did you reside in July, 1902?

A. At Lewiston.

Q. Idaho? A. Lewiston, Idaho, yes, sir.

Q. And you were not married at that time?

A. No, sir.

Q. Now, I will show you the timber and stone lands sworn statement of Carrie D. Maris, dated July 15th, 1902, and ask you if you signed that paper and filed it in the land office at Lewiston, Idaho, at or about the date it bears?

A. Well, that is my handwriting there.

Q. That is the first paper you filed in the land office to initiate the entry?

A. Well, that is my handwriting on there.

Q. I show you the nonmineral affidavit of the same date, and ask you if you signed that paper?

A. That is my signature; yes, sir.

Q. Please answer yes or no. I show you the testimony of Carrie D. Maris given at final proof, November 1, 1902, and ask you if you [1843—1513] signed that paper?

A. That is my handwriting; yes, sir.

Q. I show you the cross-examination of Carrie D. Maris, taken at the same time, dated November 21, 1902, and ask you if you signed that paper?

A. That is my signature.

Q. Well, why don't you say you signed it, then?

A. Well, I signed it.

(Testimony of Mrs. Carrie D. Maris Rexford.)

Q. In July, 1903, were you employed in any capacity, Mrs. Rexford? A. In July, 1903?

Q. 1902? A. July, 1902?

Q. Yes? A. Yes, sir, I was.

Q. In what capacity? A. I was clerking.

Q. Where? A. At Vollmer's at that time.

Q. Now, what business was Mr. Vollmer engaged in at that time? A. In the dry-goods business.

Q. And you were a clerk in the dry-goods store?

A. Yes, sir.

Q. Who first spoke with you about taking up a timber claim? A. Clarence Robnett.

Q. That is Clarence W. Robnett?

A. Clarence W. Robnett.

Q. And do you know where he was employed at that time?

A. In the First National Bank—or at the bank there, I guess it was the First National—the bank.

Q. Well, was it the bank in which the Kesters and Kettenbachs were interested? [1844—1514]

A. Yes, sir.

Q. That is the Lewiston National Bank.

A. Well, the Lewiston National Bank.

Q. Well, Vollmer's bank is the First National Bank. A. Oh—that was it.

Q. Now, what did Mr. Robnett say to you, Mrs. Rexford?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to her taking up a timber claim, or any conversation with Mr. Robnett, in so far as her evidence relates to

(Testimony of Mrs. Carrie D. Maris Rexford.)

bills No. 406 and 407, upon the ground that the entry of the witness is not involved in these two particular actions, and the evidence is irrelevant and immaterial.

Mr. GORDON.—Now, just answer the question.

The SPECIAL EXAMINER.—Just read the question.

The Reporter repeated the last question.

WITNESS.—Well, now, as nearly as I can tell you, we were walking along the street as I was going home to my dinner, and he overtook me, and he asked me—it was just at the time they were taking up claims—why I didn't take up a timber claim. I told him it was because—well, I believe I said, “How can a working girl save up money enough to take up one of those timber claims?” Is that all you want?

Q. No.

A. Well, he told me it wasn't necessary for me to have the money. Well, I told him I didn't see how I could get it, and he went on to explain that if I went out and took it up that he would furnish all the expense money and find me a purchaser; that when I had proved up on the claim he would find a buyer, and then the expense money was to be taken out of what he got for the claim, and the profits were to be divided, half between himself and myself.

Q. That was Mr. Robnett's proposition?

A. That was Mr. Robnett's proposition, yes, sir. And he went on to tell me how many others—well, I knew that ever so many others [1845—1515]

(Testimony of Mrs. Carrie D. Maris Rexford.)

had filed, but I didn't know at the time how they had got their claims, but he explained; he said that ever so many others had done the same thing. And that is how I entered it.

Q. Now, that was before you even went to view the claim?

A. Yes; that was the very first that I ever thought of getting a claim—the first time I had ever given a thought to getting one.

Q. You didn't have the money to buy a timber claim? A. No, sir, I didn't.

Q. Well, what did you say to him?

A. I told him that I couldn't, and he said that I could, and he said that was the way that others had taken it up. He said if I would take it up that he would get a claim for me to take.

Q. Well, did you finally consent to take a claim?

A. I did, yes.

Q. And did he tell you what claim he had?

A. Not that day he didn't, but it wasn't but a few days until he did; he sent word for me to come over to the bank he wanted to see me. Well, let me think; I believe it was a squatter's claim first he offered me, and I didn't want that. I told him I couldn't take that.

Q. Why?

A. Because I understood I had to live on it, and I couldn't do that. I had to stay where I was and work.

Q. Well, did he want you to go up there and "squat" on a claim?

(Testimony of Mrs. Carrie D. Maris Rexford.)

A. He offered me that first, yes, and he seemed to think it was just the thing; but I didn't take the proposition at all.

Q. Well, then what next happened?

A. Well, I don't know just how many days elapsed, but several—

Q. Well, now, I will ask you: You say you went to the bank to see him. Where did you see him in the bank?

A. Well, there was a little, small room off from the bank, and there is a hall. I saw him as I stepped into the bank. Well, he was [1846—1516] standing right there waiting for me, he knew I was coming, and I went into a little room—not into the bank part, but a little room off from the bank.

Q. Do you know whether that was the directors' room? A. I guess it was.

Q. Well, do you know?

A. No, I don't know for sure. I think that was the room. There was a hall on the same floor.

Q. Now, what did Mr. Robnett say to you on that occasion?

A. Well, that is the time he offered me the squatter's claim, and then when I didn't take it I went back to my work, and that is all there was to it that day; and then later he sent for me to go to see him, and he said he had a stone and timber claim for me just at that time, and that there was three claims that he had at that time, and he said if I would go right away he would give me the first claim and he would give me the best, and that others would follow

(Testimony of Mrs. Carrie D. Maris Rexford.)

the second day, and that if I would take it I would get the first of them, and I accepted the proposition, and went.

Q. And where did you go?

A. I went as far as Greer on the train; then I took the stage from Greer to Pierce City.

Q. And then you went on to the claim from Pierce City? A. I did.

Q. Did you pay your own expenses of that excursion? A. No, sir.

Q. Where did you get the money from to pay that?

A. From Mr. Robnett.

Q. Do you remember how much money he gave you to pay the expenses of that trip?

A. Well, now, I don't know as I can remember. It seems to me that it was \$50.00 that I had. He gave me all I needed, whatever it was. I got all the money from him for the trip. [1847—1517]

Q. And did you meet a locator? A. I did.

Q. Did you make your own arrangements to meet him?

A. I did not. I didn't even know the gentleman. Yes. I did—I will take that back; I had been introduced to him in Lewiston—Charlie Jensen—and he was at Pierce City waiting for me. He had been notified by Robnett that I was coming, and I think I had been told where to go, and he was there waiting for me when I got there.

Q. Now, do you remember who went with you besides Jensen?

A. Well, I made the trip to Pierce City alone, but

(Testimony of Mrs. Carrie D. Maris Rexford.)

at Pierce City there was a young man by the name of Charlie Smith that went out. He didn't go out with me, but he went later so as to be a witness for me at the land office, and Johnnie Marksberry.

Q. And then you returned to Lewiston after viewing the land, did you not? A. I did.

Q. And did you see Mr. Robnett before you filed?
A. I did.

Q. And do you remember who prepared the filing papers that I have shown you—the papers you filed in the land office? A. You mean in the land office?

Q. No. Who prepared them for you? Where did you get the papers?

A. Well, I didn't have anything given to me until I was in the land office.

Q. Now, who gave them to you? Did you go to the land office alone?

A. Yes. Mr. Robnett went as far as the door of the land office with me, but I went in alone, and as far as I know he wasn't in the room when I filed.

Q. Now, who paid the filing fee?

A. Mr. Robnett gave me the money. I went right out of the bank [1848—1518] to the land office, and he gave me the money down there.

Q. How much did he give you?

A. I believe it was \$411.00.

Q. No—I mean the first time you went to the land office, when you went to file the first paper you filed in the land office?

A. Well, now, I don't know how much it took. He only gave me just enough for what I needed, but

(Testimony of Mrs. Carrie D. Maris Rexford.)

I didn't notice what it was.

Q. Was it somewhere about between \$7.00 and \$11.00?

A. \$11.00—now that's what he gave me; it was \$11.00.

Q. That was the day you filed your first papers?

A. Yes, sir.

Q. That is the day he took you to the door of the land office?

A. Yes, sir. Well, now, when I went back again he went with me to the door of the land office.

Q. Now, where did you see him in the bank each day you went to see him?

A. Now, the day he gave me the money he handed it to me through the window in the bank.

Q. Is that the day you made the final proof?

A. Yes, sir; the day I went to the bank; he handed it to me through the window of the bank.

Q. Then did he give you any money?

A. I think he gave me \$411.00, or whatever the amount was.

Q. It was four hundred and some odd dollars?

A. Yes.

Q. Where did you get that?

A. From Clarence Robnett. He gave me that through the window of the bank, and then he came out of the bank and went upstairs to the land office door with me.

Q. Now, did he tell you what you were to swear to when you went to the land office, as to where you got that money?

(Testimony of Mrs. Carrie D. Maris Rexford.)

A. No, he didn't. But I will say this much: I wasn't asked any questions that made me swear to a single lie. [1849—1519]

Q. Weren't the questions asked you?

A. I wasn't asked anything that made me lie or say one false thing, because I'll tell you, when I went back to the store—they knew that I had made this trip and went out, and as quick as I came back to the store someone said, "Well, how many lies have you swore to?" And I said, "Not a single one; they didn't ask me to swear to anything that was wrong; that I hadn't told anything false."

Q. Were your final proof papers prepared downstairs?

A. Well, not that I know of. I don't know.

Q. And you say Robnett gave you four hundred and some odd dollars; or do you remember you paid just exactly \$400.00 and whatever the expense was?

A. Yes, sir.

Q. And you got all that from Robnett?

A. Every bit; yes, sir.

Q. And you got your final receipt, and did they give you a receipt at that time when you paid that \$400.00 into the land office? A. Well, I—

Mr. GORDON (to Mr. TANNAHILL.— Have you got her deed?

Mr. TANNAHILL.—No, I don't think so. She deeded to Robnett, and then Robnett deeded to Kester and Kettenbach.

WITNESS.—No. You see I didn't get the deed, because I deeded it over to Robnett. He got me to

(Testimony of Mrs. Carrie D. Maris Rexford.)

do that the day before I was married.

Mr. GORDON.—Q. Now, did you ever give a note to Mr. Robnett for this money? A. No, sir.

Q. That he gave you?

A. I never did. I was never even asked for one.

Q. And did you ever pay any interest on it?

A. I did not; no, sir.

Q. Did you ever spend any of your own money in taking up the claim, going up to the claim, or any of the expense at the land office, or final proof, or any incidental expense at all? Did you ever pay [1850—1520] out any of your own money?

A. One dollar, that's all, because I just happened to be one dollar short, and I used it out of my own money so I wouldn't have to ask him for it; but I was just one dollar short.

Q. How much did you get out of this claim?

A. Well, I got \$106.00. I got it, I believe, in two or three payments; I don't know as I can tell exactly, but I got \$106.00.

Q. And who did you get it from?

A. Robnett, and he never asked me for any paper. If he has any paper against me in any way I have never given it. I never was asked for it. He told me I could have whatever I wanted; I suppose if I had asked for more he would have given it to me. That is what I asked for and that is what I got.

Q. Accommodating Clarence!

A. Well, he told me that, and that's how I got it.

Q. Now, when you took up this land, Mrs. Rexford, it was your understanding that you were to

(Testimony of Mrs. Carrie D. Maris Rexford.)

convey it to whoever Robnett told you to, and he was to divide it?

A. Well, he said he would find a purchaser.

Q. Well, I say, you were to convey it to whoever he said, and you were to divide the profits?

A. Yes, sir.

Q. That is the understanding you had when he first talked to you about it?

A. Yes, sir; that is the way I understood it.

Q. Now, do you remember when you got the first of this \$106.00?

A. No, I don't think I can give you the dates at all. Well, let's see, I know I got some money one time just before Christmas time; perhaps the first of December or such a matter.

Q. Was that just after you had made your final proof, or before?

A. Well, now, I don't know that I can tell you exactly which it was. I couldn't tell you exactly.
[1851—1852]

Q. You never paid a location fee?

A. No, sir; I never saw that money.

Q. You were never asked to pay it, either, were you?

A. I never was. Jensen told me that Robnett had told him that he would settle that, and Robnett told me that he would settle it with Jensen. I never had the handling of it in any way.

Q. Well, you were not to pay any of your own money for this at all; you were to be under no expense whatever; is that correct?

(Testimony of Mrs. Carrie D. Maris Rexford.)

A. That is the way I understood it; yes, sir. Robnett made the proposition himself. I never gave it a thought that I could, but he said I could.

Q. And if it had not been for that, and that he said he would sell it for you and divide the profits, you would not have done it?

A. Well, I wouldn't have done it unless he had explained to me that he could sell it, and he said he could.

Q. And the first talk you had with Robnett, that is the time he said he would find you a purchaser, was it not?

A. Yes, he went on to explain the whole thing. Yes, the first time.

Q. Who were the other people that he told you had taken up claims under those conditions?

A. Well, I don't know exactly that I remember. A great many of them were strangers to me.

Q. Was there any of them that you remember the names of?

A. Well, I don't know as I could right now. You see this has been some time ago, and a good many of them I didn't know at all when he mentioned them, and I don't know that I can recall one now that he did mention.

Q. How many times were you in the Lewiston National Bank relative to this transaction?

A. Well, let me think. I was in at least four or five times. There was the twice that he sent for me, the first time to see about me [1852—1522] taking this squatter's claim, and I didn't take it; then the

(Testimony of Mrs. Carrie D. Maris Rexford.)

next time he made a proposition of the stone and timber claim, and I did accept that; and then I went back the morning I got word to go and get the money to make the trip with; and then the two trips to the land office when I got money from him, and times when I wanted money that he let me have on the claim.

Q. Four or five or six times?

A. Yes, there must have been all of that—six or seven, possibly.

Q. And the profits were to be divided when he sold the property; is that right? A. Yes, sir.

Q. You were not to sell the property; he was to sell it?

A. He was to sell it; yes, sir. He told me I had nothing to bother with at all; nothing to see to at all; he would attend to everything. That is the way I understood it when I went up.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Carrie D. Maris, dated July 15th, 1902, the nonmineral affidavit of Carrie D. Maris, the testimony of Carrie D. Maris given at the final proof, and the cross-examination of Carrie D. Maris taken at the same time, all of which papers have been identified by the witness, the testimony of the witnesses on final proof, and the cross-examination of them, the receiver's receipt and the register's certificate, dated November 21st, 1902, a certified copy of the patent, dated February 25th, 1904, issued to Carrie D. Maris, all relating to the entry of the southeast quarter of the southwest quar-

(Testimony of Mrs. Carrie D. Maris Rexford.)

ter of section 12, the east half of the northwest quarter and the northeast quarter of the southwest quarter of section 13, in township 36 north, of range 5 east, of Boise meridian. And we also offer in evidence a certified copy of a deed from Carrie D. Maris, a single lady, dated the 2d day of June, 1903, conveying to Clarence W. Robnett the southeast quarter of the southwest quarter of section 12, and the east half of the northwest [1853—1523] quarter and the northeast quarter of the southwest quarter of section 13, in township 36 north, of range 5 east, of Boise meridian, acknowledged by Carrie D. Maris June 2d, 1903, before John E. Nickerson, a notary public for Nez Perce County, Idaho, and filed for record in the office of the recorder of Shoshone County, Idaho, at the request of the Shoshone Abstract Company, June 27th, 1903.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents offered, but severally object to each and all thereof, in so far as they relate to bills Nos. 406 and 407, upon the ground that the entry made by the witness is not involved in these two particular actions, and they are irrelevant and immaterial. And the defendants severally object to the admission of all of the final proof papers in evidence in support of either of the bills or actions, upon the ground that they are matters relating strictly to the final proof, occurring long after the filing of the sworn statement, and are irrelevant and immaterial.

Said documents were thereupon marked by the

(Testimony of Mrs. Carrie D. Maris Rexford.)

Reporter as Exhibits 76, 76A, 76B, 76C, 76D, 76E, 76F, 76G, 76H, 76I, 76J, 76K, 76L, 76M, 76N, and 76-O.

Mr. GORDON.—Q. Mrs. Rexford, the money that you got for the land office, the \$400.00 you paid in there, you drew that money from Robnett, did you not?

A. Yes, sir, I did.

Q. Well, now, in this cross-examination that you signed here you were asked this question: "Question 17"—this is when you made your final proof—"Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?" "Answer. I earned it clerking in stores. 3 months."

A. I never made that reply, because that would have been a falsehood, and I didn't do it. [1854—1524]

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mrs. Rexford, you gave a mortgage on the land after you had made final proof, to Mary L. Sullivan, did you not? A. No, sir.

Q. You don't remember of signing any instrument to Mrs. Sullivan? A. No, sir, I don't.

Q. And—

A. To who did you say, Mr. Tannahill?

Q. To Mary L. Sullivan.

A. I don't even remember her. I don't know anything about her. Have they any such document against me?

(Testimony of Mrs. Carrie D. Maris Rexford.)

Q. Mrs. Sullivan, I understand, furnished the money for you to make final proof—Robnett got it from Mrs. Sullivan.

A. Well, I don't know anything about that. This is the first time I ever heard her name mentioned.

Q. The abstract shows there was a mortgage executed by you? A. It does?

Q. Yes. A. Well, I know nothing of it.

Q. Now, after you made your final proof you held the land how long before you finally deeded it to Mr. Robnett?

A. Well, I deeded it to him on the 2d of June, along late in the afternoon, and I was married the next day.

Q. The 2d of June, of what year?

A. I was married on the 3d of June, and I deeded it to him on the 2d of June, 1903.

Q. And you made your final proof on November 22d, 1902?

A. Well, that must have been about the time. I couldn't tell the date exactly.

Q. And I will ask you if you frequently talked with Mr. Robnett in the meantime about selling the land? [1855—1525]

A. Oftentimes, yes; and he would keep me thinking that in just a day or two, or a few days or a week, he would have a buyer for it. I even sat in that room off from the bank while he telephoned—I don't know who to, but he made me think he was talking to a man in Moscow, to a man that was just ready to purchase the land; and when I left the office that day I thought I would have my money in just a few days. He was

(Testimony of Mrs. Carrie D. Maris Rexford.)

talking over long distance, and I listened to the conversation.

Q. And did you know of his trying to sell it to Joe Molloy?

A. No, sir, I didn't. If he did that I didn't know it, but he didn't always tell me who he was expecting to sell it to, only he was just on the verge of selling it to somebody.

Q. He would first tell you that someone was going to buy it? A. Yes, sir.

Q. Or he was going to sell it to someone; and then the next time he would see you he would tell you he had a deal pending with someone else?

A. Yes, that's the way it was, and I often met him on the street going home in Lewiston, and always that would be mentioned to me, that he was just ready to sell it every time, and the night I deeded it over to him—the evening just before I was married—I fully expected my money within ten days.

Q. And how long was it after that before you got your money?

A. Oh, I never got a cent after I was married. All the money I ever got from him I got while I was still clerking in Vollmer's store.

Q. Now, did he ever tell you one time in regard to a sale that he was negotiating with someone for \$1,500.00.?

A. Well, now, he might have, but I don't remember. I do remember that I expected—I thought he was going to sell that claim for \$2,000 or \$2,500; he told me he thought it was worth every dollar of that. Now he may have mentioned it; I wouldn't want to

(Testimony of Mrs. Carrie D. Maris Rexford.)

say that he didn't, but I don't remember that he did.

Q. And do you know that he ever sold it to Kester and Kettenbach for \$1,600.00? [1856—1526]

A. I do not.

Q. Anyway, you didn't get your part of that \$1,600.00—that is, only the \$106.00?

A. That is all I ever did get.

Q. Over and above the expenses of the claim?

A. Yes, sir, that's all I ever got.

Q. Now, did he tell you what the expenses of acquiring title to the land was?

A. Well, it would be just what my trip was to Pierce City and back, and—

Q. About \$50.00?

A. Well, I believe that's what he gave me for the trip. It is so long ago and I haven't thought of this for quite a while, but I think that was it.

Q. And \$100.00 for location fee?

A. But I never handled that.

Q. Well, I was figuring up the expenses of the claim.

A. Oh, well; yes, there was to be \$100.00 paid to Jensen. He said he paid that, or would pay it.

Q. And \$11.00 for advertising?

A. Yes, I had that.

Q. And \$400.00, the purchase price of the land?

A. I believe that was just what was given me.

Q. That would be \$561.00?

A. And then there was—let's see, what fee was it we had to pay to the notary public when I signed the claim over to him? I didn't handle that, though; he paid that. I didn't have the handling of it, so I

(Testimony of Mrs. Carrie D. Maris Rexford.)

couldn't say what it was, but I think it was only a dollar at the time; but whatever it was he handled that; he paid it himself.

Q. Then the expenses were something like \$600.00? A. Yes, they were.

Q. And if he sold the claim for \$1,600.00, there would have been [1857—1527] \$1,000.00 to divide between you?

A. Well, I don't know anything about it. I didn't even know that he ever sold it. He did sell it, though, did he?

Q. Yes, the abstract shows that he sold it to Kester and Kettenbach for \$1,600.00; that is what they gave for it.

A. Well, he told me when he sold it he would get at least \$2,000.00 or \$2,500.00 for the claim, and I expected my share out of it—fully expected it; and when I came down to Colfax—was married and came down there—I expected that at least within ten days I would have my money. That was the last understanding between he and I, that it would not be more than a few days at the most; and I never got a cent after that—not one penny.

Q. Now, did you get a part of this \$106.00 just before you got married?

A. Well, I couldn't tell you just how many days before; it wasn't a very long time before. The last that I got, I believe it was \$60.00 at one time; I believe the last he handed me was \$60.00, and when he handed me that he asked if I wanted more, and that's just what I wanted, and that's all I took; but he asked me then if I wanted more.

(Testimony of Mrs. Carrie D. Maris Rexford.)

Q. Now, at any of these times when you entered the bank to see Robnett you had no conversation with Kester or Kettenbach, did you?

A. Never. Clarence Robnett is the only one I ever had any dealings with at all.

Q. Did he make an effort to have his conversations out of the presence of Kettenbach and Kester?

A. Well, I don't know that those gentlemen were ever present at the conversations at all. Now, possibly,—I couldn't tell you,—possibly they were in the bank when he handed me out that money; but I never had any dealings with them, and whoever it was behind there in the bank I would pass the time of day.

Q. You never had any agreement or understanding that you would sell your land to Kester and Kettenbach? [1858—1528]

A. Never. That was never mentioned. As to who were the buyers he never mentioned, except the once when I supposed he was talking to Moscow, and then he told me that a man by the name of Nat. Brown was to be the buyer; but that is the only name that was ever mentioned as a purchaser—no, I believe there was a lumber company, but I don't believe I remember who the company was—some company, anyhow,—but the only individual he mentioned was a man by the name of Nat. Brown, and I supposed he was talking to him when I overheard that conversation over the telephone in the bank.

Q. The Potlatch Lumber Company, or the Clearwater Timber Company, were they mentioned?

A. Well, I couldn't say what the company was; I don't remember.

(Testimony of Mrs. Carrie D. Maris Rexford.)

Q. Do you remember of his telling you that he had optioned it to Fred Emory—had some negotiations with Fred. Emory about purchasing it?

A. I don't remember that name, either. I don't remember of it now.

Q. In fact, you had no definite agreement to sell your land before you made your final proof, did you?

A. Well, now, the first time he offered me the proposition to take this claim he told me he would go ahead and see to the selling of it, and I would have no more trouble, and all I would be required to do would be to take the land and prove up on it, and he would see to the rest.

Q. He would find you a buyer?

A. Find a buyer and sell it for me, and we would divide the profits; that was thoroughly understood then.

Q. And there was no name mentioned as to who you should deed it to? A. No, there wasn't.

Q. And there was nothing said about you deeding it to anyone? A. No, there wasn't.

Mr. TANNAHILL.—That's all. [1859—1529]

**[Testimony of Benjamin F. Bashor, for
Complainant.]**

BENJAMIN F. BASHOR, a witness called on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Benjamin F. Bashor, is it not?

A. Yes, sir.

(Testimony of Benjamin F. Bashor.)

Q. Where do you reside, Mr. Bashor?

A. Spokane.

Q. Where did you reside in 1903?

A. Well, up to about the month of April I resided in Lewiston, Idaho, when I removed to Peck, about thirty-four miles east of Lewiston.

Q. Do you remember taking up a claim under the timber and stone act in March, 1903?

A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated March 21st, 1903, signed Benjamin F. Bashor, and ask you if you signed and filed that paper in the land office at Lewiston?

A. That is my signature.

Q. I show you the nonmineral affidavit of Benjamin F. Bishop of the same date.

A. That is my signature.

Q. I show you the testimony of Benjamin F. Bashor given at final proof June 17th, 1903; is that your signature? A. Yes, sir.

Q. And the cross-examination taken at the same time? A. Yes, sir.

Q. I will ask you who spoke with you about taking up a timber claim?

Mr. TANNAHILL.—The defendants severally object to any evidence [1860—1530] of the witness relative to taking up a timber claim, in so far as the evidence relates to bills No. 406 and 407, on the ground that the evidence is immaterial, the entry not being involved in these two particular actions.

Mr. GORDON.—Q. Who first spoke with you about taking up a timber claim?

(Testimony of Benjamin F. Bashor.)

A. Mr. Robnett.

Q. State where it was and what it was, and what was said.

A. Well, it was during the month of February, as near as I can remember now. It has been some time ago and I have given it very little thought. It was in the early part of the year 1903; I wouldn't be positive about the month—either January or February, and he first spoke to me on the streets of Lewiston. Very little was said; and on other occasions he spoke about it before I became interested. He simply told me it was a chance to make some money, that there was timber claims being taken up, and so forth, and I told him I didn't have the fever yet, or something to that effect, but after talking to me several times I became somewhat interested, and he told me then at different times that Messrs. Benton and Knight, I think it was, were the locators, and were going to take a crowd up there on a certain date, and the date had already been set, and I consented to go with them, and when the time arrived, or about that time, for some reason they didn't go, and he told me that I believe in the directors' room of the Lewiston National Bank that they couldn't go at that time, and he set a later date; I don't remember just the date, but I think the fore part of March, and we did go, Benton and Knight, three of us, went up at the same time.

Q. Who were of the party that went to view this land besides Benton and Knight?

A. They were the only ones of the locators.
[1861—1531]

(Testimony of Benjamin F. Bashor.)

A. A man named John Little and Arthur Storey, I think it was, or Store,—a son of George Store,—three of us.

Q. Did you pay a location fee?

A. No, I didn't, at that time; I gave my note for the amount, whatever it was.

Q. When did you give your note?

A. Well, now, I can't remember. I don't remember whether it was at the time the filing was made or when I proved up; I wouldn't be positive. I gave him a note—gave him—

Q. Gave who? A. Robnett.

Q. For how much?

A. Well, it was the whole amount, whatever the cost was,—about \$400.00,—and then the location fee, whatever that was,—either \$100.00 or \$125.00, I don't remember which; and I can't remember whether I combined that all in one or it was in two separate notes, but I am almost sure it was all in one note.

Q. And that was given about the time you made your proof? A. I think it was.

Q. Who paid your expenses up to view this land?

A. I paid that myself.

Q. Who prepared your filing papers?

A. Well, sir, I don't remember about that.

Q. Do you remember going to any lawyer's office?

A. No, I don't.

Q. Well, you filed anyhow. Do you remember who paid the filing fee? A. I paid that.

Q. Were you reimbursed for that? [1862—1532]

A. No.

(Testimony of Benjamin F. Bashor.)

Q. Now, how many times did you talk to Robnett about this matter in the bank? A. In the bank?

Q. Yes.

A. Well, I think the conversations here in the bank was two different times, as near as I remember now.

Q. One was just before you filed, the day the postponement was made, and the other the time the final proof was made?

A. And the time the final proof was made.

Q. Were you in the directors' room both times?

A. Yes, sir. He gave me his personal check on the Lewiston National Bank.

Q. You had that cashed in the bank?

A. Yes, sir.

Q. Did that happen the same day you made your proof? A. Yes, sir.

Q. And that was the money you made your proof with? A. Yes, sir.

Q. Did Robnett say anything to you about that was your own money?

A. Yes, he told me on two different occasions, I think.

Mr. TANNAHILL.—We object to any evidence in relation to final proof, upon the ground that it is incompetent, irrelevant and immaterial.

Mr. GORDON.—Q. Did he have a set of questions down there that you had to go over at the land office?

A. No, sir.

Q. And you went to the land office and paid that \$400.00 in, did you, that you had gotten on Robnett's check?

(Testimony of Benjamin F. Bashor.)

A. Yes, sir; whatever it was. It was a little less than \$400.00. [1863—1533]

Q. Do you remember them asking you in the land office where you had gotten that money?

A. Yes, sir.

Q. Do you remember what you told them?

A. Yes, sir.

Q. What did you tell them?

A. I told them I made it when I was county assessor.

Q. And that you had had it six months?

A. I don't remember just how long I said.

Q. That wasn't exactly true, was it?

A. No, sir.

Q. Now, you say you gave Robnett a mortgage or—they gave you a receipt at the land office when you paid that money, did they? A. Yes, sir.

Q. What did you do with that?

A. I suppose I turned that over to Robnett when I gave him the mortgage, to secure those notes.

Q. And that was the same day?

A. The same day, yes sir.

Q. And you gave him a mortgage for \$550.00?

A. Well, it would be about that amount, I believe; it was for the location fee and to prove up, whatever that was.

Q. Did he caution you when you went to the land office to say that you didn't get the money from the bank?

A. Well, he cautioned me—I don't know just the words, but he cautioned me not to tell them that I had to borrow the money, something to that effect.

(Testimony of Benjamin F. Bashor.)

I don't know the words he used, but—

Q. Now, did you have any talk with Will Kettenbach about this claim?

A. About the land? [1864—1865]

Q. Yes. A. No, sir.

Q. Never on any occasion?

A. No, sir. All the conversation was done through Mr. Robnett; there was nothing between Kettenbach and I.

Q. Didn't you meet Mr. Will. Kettenbach on the train one day and have a talk with him?

A. Well, I was thinking—yes, it was Kettenbach, too; I was thinking at a time since, but it was Kettenbach; I met him on the train as I went to Moscow, it seems.

Q. What did he say then?

A. I told him I had just received a letter from Robnett with reference to the timber land, and he wanted me to give him a deed to that to properly satisfy the note and mortgage. I told him Robnett wanted me to turn it over to Kettenbach; the letter was from Robnett and I had just received it a few days before meeting Mr. Kettenbach on the train.

Q. What did Kettenbach say to you?

A. He told me to take it up with Robnett when I got back home. I told Mr. Kettenbach I wouldn't take it.

Q. What did Kettenbach say he was giving for those claims, over and above the notes?

A. About \$30.00, that was about what it amounted to. I think he was offering me about \$1,000.00, but

(Testimony of Benjamin F. Bashor.)

that is about what it amounted to—\$30.00 above notes and interest. That was two years and a half though after final proof was made.

Q. And you did then convey to William F. Kettenbach? A. How is that?

Q. You afterwards conveyed to William F. Kettenbach?

A. Yes, sir, some time after; I don't remember the exact date. [1865—1535]

Mr. GORDON.—We offer in evidence the papers that relate to the timber and stone entry of Benjamin F. Bashor, which have been identified by him, and the other files of the land office relative to that claim. I think these are already in, Mr. Tannahill. We also offer a certified copy of the mortgage. I think these have already been offered and are exhibit No. 49. We also offer the certified copy of the receiver's receipt, dated July 17, 1903, issued to Benjamin F. Bashor, for Lot 4, and the southwest quarter of the southeast quarter and the south half of the southwest quarter of section 24, township 39 north of range 3 east, Boise meridian, recorded in the office of the Recorder of Shoshone County, at the request of W. F. Kettenbach, June 20, 1903; also certified copy of mortgage, dated June 17, 1903, made by Benjamin F. Bashor and wife to Clarence W. Robnett, conveying the property last described to Clarence W. Robnett, to secure a promissory note of even date therewith, payable to the order of Clarence W. Robnett, in the sum of \$550.00, in one year after date, said mortgage being acknowledged before John E. Nicker-

(Testimony of Benjamin F. Bashor.)

son the 17th day of June, 1903, and recorded in the office of the Recorder of Shoshone County at the request of W. F. Kettenbach June 20th, 1903.

Mr. TANNAHILL.—The defendants severally object to each and all of the documents in so far as they relate to bills No. 406 and 407, upon the ground that the entry of the witness is not involved in these two particular actions, and irrelevant and immaterial. And the defendants further object to the introduction of any of the documents in evidence in so far as they relate to the final proof, in support of either of the actions now pending, on the ground that they are matters relating to the final proof, long after the filing of the sworn statement, and irrelevant and immaterial. The defendants severally waive any further identification of the papers. [1866—1536]

Mr. GORDON.—Q. Have you that letter that Robnett wrote you concerning this matter?

A. No, sir.

Q. Do you know where it is?

A. I haven't any idea, no. It has probably been destroyed before now.

Q. Do you know the import of that letter?

A. Which one? Before I saw Mr. Kettenbach on the train?

Q. Yes.

A. No, I can't say that I do know the import, except that it was about a thousand dollars that he offered me.

Q. Wasn't it to the effect that Kettenbach wanted you to deed the property to him for the note?

(Testimony of Benjamin F. Bashor.)

A. Yes, that was the idea, what it amounted to. He wanted me to deed to Kettenbach, said he simply wrote to me as a personal friend, thought that was the best I could get out of it to save the expense of foreclosing it.

Q. And after you had that talk with Kettenbach he told you to go and see Robnett about it?

A. Yes; and when I got home I think I wrote to Robnett and told him I would take \$1100.00 for it.

Mr. GORDON.—We also include in that offer the receiver's receipt and the register's certificate.

Mr. TANNAHILL.—Yes.

Cross-examination.

(By Mr. TANNAHILL.)

Q. You had no arrangement or understanding with Mr. Robnett to sell this land before you made your proof, did you? A. No.

Q. And no such arrangement with Kester and Kettenbach? [1867—1537]

A. No, sir; never a word said among any of us or either of us before the final proof was made.

Q. How long was it after you made your final proof that you sold the land?

A. As near as I remember, it was about—it must have been in the neighborhood of three years, before the conveyance was made.

Q. You had held the land during that time and paid taxes on it?

A. No, I don't think I paid any taxes. They probably took the taxes out of the amount I sold the land for.

(Testimony of Benjamin F. Bashor.)

Q. You was at liberty to sell the land to anyone else, was you?

A. I had offers from other parties, and on my return I wrote to Robnett and told him to that effect. I don't know who the other parties was, but a man by the name of Morrison was representing them, and I don't remember what it was, and I wrote Robnett and told him what they offered me and told him if they would give me any better than that that they could have it.

Q. And you got about \$1,100.00? The \$1,100.00 purchase price included these notes?

A. Yes, sir.

Q. And the mortgage and taxes and so forth was deducted from that?

A. Deducted from the amount they was to pay me for the land—something over \$100.00.

Q. The affidavit that you made at the time you made your filing, your sworn statement, that you had no contract or agreement, either express or implied, direct or indirect, to convey the land to anyone else until after you acquired title, that was true, was it? A. Yes, sir.

Mr. TANNAHILL.—That is all. [1868—1538]

Redirect Examination.

(By Mr. GORDON.)

Q. What did Mr. Morrison offer you for the claim?

A. I think it was \$1,050.00, I think. I know I had an opinion that he must have known what Kettenbach was paying, or something, and he offered a little more than he was paying. I think he offered

(Testimony of Benjamin F. Bashor.)

\$1,050.00, and I think I wrote to Robnett to that effect, and I wrote him that if he would give me \$1,100.00 I would let him have it.

Q. And they allowed you a settlement on that basis? A. Yes, sir. [1869—1539]

[Testimony of Drury M. Gammon, for Complainant.]

DRURY M. GAMMON, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Drury M. Gammon, is it not?

A. Yes.

Q. Where do you reside, Mr. Gammon?

A. Dayton, Washington.

Q. Where did you reside in May, 1903?

A. Lewiston, Idaho.

Q. And how long had you resided in Lewiston?

A. What's that?

Q. How long had you resided in Lewiston?

A. It was from 1899 to 1903.

Q. What was your employment in Lewiston at that time? A. Waiter at the hotel.

Q. What hotel?

A. The Bollinger Hotel. Well, at that time I guess it was the Raymond House.

Q. Waiter at the Raymond House?

A. Yes, sir.

Q. Were you married? A. No.

Q. I show you timber and stone lands sworn state-

(Testimony of Drury M. Gammon.)

ment of Drury M. Gammon, dated May 12th, 1903, and ask you if you signed that paper and filled in the same in the land office at Lewiston, Idaho, on or about the date it bears?

A. That is my name all right. I guess I signed it. I don't remember it myself.

Q. Well, that is the paper you signed, isn't it?

A. Yes, sir.

Q. I show you nonmineral affidavit of Drury M. Gammon of the [1870—1540] same date, and ask you if you signed that? Answer yes or no.

A. Yes.

Q. I show you the testimony of Drury M. Gammon given at the final proof August 19th, 1903, and ask you if you signed that paper? A. Yes, sir.

Q. I show you the cross-examination of Drury M. Gammon of the same date, and ask you if you signed that paper? A. Yes.

Q. Who first spoke to you about taking up a timber claim, Mr. Gammon?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to taking up a timber claim, so far as it relates to bills No. 388 and 407, upon the ground that the entry is not involved in these two particular actions, irrelevant and immaterial.

Mr. GORDON.—Answer the question, Mr. Gammon.

WITNESS.—Mr. Robnett.

Q. Mr. Clarence W. Robnett? A. Yes.

Q. And what did Mr. Robnett say?

(Testimony of Drury M. Gammon.)

A. Well, he asked me if I wanted to take up a timber claim.

Q. And what else did he say?

A. Oh, I told him at first I didn't know, and I asked him how much there was in it if I wanted to take it up. Well, he asked me if I would sell my right, and I told him no, I wouldn't sell my right the way he wanted me to.

Q. Well, now, how did he want you to?

A. He wanted to know if I would take it up and sell it back to him for \$100.00 clear of my expenses, and I told him no.

Q. And what did you say then after that?

A. To Robnett?

Q. Yes.

A. Well, he said he would see me again then.

[1871—1541]

Q. Then did you see him again before you made your entry?

A. No, not until I made my entry; not till I looked at the book in the land office about the land.

Q. You had looked at the book? A. Yes.

Q. Well, I mean before you went up to look at the land you saw him again, didn't you? A. No.

Q. Now, the first time he talked with you didn't he tell you that if you would take up a timber claim he would give you \$150.00 for your right?

A. Yes, sir.

Q. And you told him you wouldn't sell your right for that, didn't you?

A. I told him I wouldn't sell my right for \$150.00.

(Testimony of Drury M. Gammon.)

Q. And how much did you tell him you would sell it for?

A. Well, I told him I wouldn't sell it for anything. I told him I would take it up and deed it to him for so much over and above expenses.

Q. And how much was he to give you?

A. Well, he didn't make any figure on it at the time until we figured up what the expenses would be.

Q. Now, that was the first time you had talked with him, wasn't it?

A. No, not when we figured on the expenses.

Q. Well, that was before you went to look at the land?

A. Yes, before I went to look at the land.

Q. And he was to furnish you the expenses, and you were to deed it back to him and get so much over and above expenses; is that correct?

A. Yes. There was so much timber on the land—he was paying me so much for the timber on the land.

Q. And that was the agreement you had with him before you ever [1872—1542] entered the land at all? A. Eh?

Q. That was the agreement you had with him before you entered the land? A. Yes.

Q. Now, you did go to look at this land, did you?

A. What's that?

Q. You did go to look at the land, did you?

A. Yes.

Q. Now, with whom did you go?

A. Why, I don't remember when I went.

Q. How is that? I say with whom did you go?

(Testimony of Drury M. Gammon.)

A. I went with Charlie Washburn.

Q. Well, who was the locator?

A. Who was?

Q. Who was the locator?

A. Charlie Washburn located me.

Q. Did you pay him anything for locating you?

A. Yes.

Q. When? A. I paid him after I came back.

Q. Where did you get the money to pay him with?

A. I took that out of my own pocket at the time then.

Q. How much? A. \$80.00.

Q. And who paid your expenses up to look at this land?

A. Well, as I say, I paid my own expenses until after I got the land, to see how much it would come to. He didn't say whether he was going to furnish me any money at the time; he asked me if I had the money to do all this, and I told him yes.

Q. Well, who prepared your filing papers?

A. What's that? [1873—1543]

Q. Who prepared your filing papers?

A. Who paid for the filing papers?

Q. No—who prepared them? Who drew them up for you?

Mr. TANNAHILL.—He is hard of hearing, Mr. Gordon.

WITNESS.—Well, I can't remember—Nicker-son, I believe.

Mr. GORDON.—Q. Did you pay him anything?

A. Yes.

(Testimony of Drury M. Gammon.)

Q. Where did you get that money?

A. Out of my pocket.

Q. Well, you went to the land office and made final proof, didn't you? A. Yes.

Q. Where did you get that money?

A. Which money—to prove up?

Q. Yes.

A. I got it at the bank.

Q. Who did you get it from there?

A. I got it from Clarence.

Q. How much was it?

A. Oh, something over \$400.00.

Q. And you took that money which he gave you and went up and made proof with it, did you?

A. Yes.

Q. The same day?

A. No—it was a day or two.

Q. But the same money, was it?

A. Yes, the same money.

Q. Now, did Robnett tell you what you should say at the land office when you went to prove up as to where you got that money? A. No, sir.

Q. Do you remember what you did say? [1874—1544] A. Not all the particulars; no.

Q. Do you remember that you told them at the land office that that money was yours, that you had saved it up, and that you had had it for six months?

Mr. TANNAHILL.—Well, I will lodge an objection relative to any questions with reference to the final proof, on the ground that it is irrelevant and immaterial.

(Testimony of Drury M. Gammon.)

Mr. GORDON.—Q. Do you remember that?

A. Yes.

Q. That wasn't exactly so, was it?

A. Well, I didn't think it was any of their business where I got it at the time.

Q. But that wasn't exactly true, was it, Mr. Gammon? A. Eh?

Q. That wasn't exactly true?

A. No, not at that time. I didn't think it was any of their business, though.

Q. And you made a mortgage to Mr. Robnett at the time that you made your final proof?

A. Yes, sir.

Q. And was that for all the expenses you had been put to? A. Yes, for all expenses.

Q. And did he afterwards tell you who to convey that claim to? A. Afterwards tell me what?

Q. Did he afterwards tell you to whom you should make a deed?

A. Yes; he said to make the deed out to him.

Q. And how much did he give you then?

A. Well, I don't just remember now what it was.

Q. About how much was it?

A. Well, for all expenses, I figured up to him what I sold the land for, why he owed me \$200.00. [1875—1545]

Q. And you got \$200.00? A. Yes, sir.

Q. And did he give you that \$200.00 then?

A. Yes, sir.

Q. And how long was that after you made your final proof?

(Testimony of Drury M. Gammon.)

A. Oh, that was quite a time afterwards. He paid me \$100.00 one time, and then he paid me \$100.00 afterwards—about three months difference, I think.

Q. Did he give you any money the day that you made your final proof, besides that which he gave you for the land office? A. No.

Q. Well, when did he give you the first \$100.00 that he gave you?

A. Oh, that was after I had proved up on it, so as I would deed it back to him.

Q. What were they paying you at the hotel at that time—\$45.00 a month? A. \$40.00.

Q. Now, let's get back to the first conversation you had with Robnett about taking up the claim. Can you hear? A. What's that?

Q. You understand, do you? A. Yes.

Q. Now, what did Robnett say to you?

A. Oh, he just asked me if I wanted to take up a claim.

Q. And what did he say there would be in it for you?

A. Well, he asked me if I would sell my right for \$150.00. I told him no.

Q. And how much did you tell him you would sell your right for?

A. I didn't make any statement of what I would sell it for then.

Q. Well, was he to furnish all the money?

A. Well, the talk was then—he didn't say whether he would furnish it or not at that time. [1876—1546]

Q. And what were you to do to get that money for your right?

(Testimony of Drury M. Gammon.)

Mr. TANNAHILL.—We object to that as calling for a conclusion of the witness and not a statement of the fact.

Mr. GORDON.—Q. What were you to do to get that money, Mr. Gammon?

A. Oh, he didn't tell me anything. He knew that I knew what I had to do. He knew all about how I should file on the land.

Q. Well, what were you to do with the land to get that money?

A. Well, he said if I wanted to I could sell it back to him.

Q. Well, isn't that what you were to do to get that \$150.00?

A. Well, I told him I wouldn't sell my right that way.

Q. And what way were you to sell your right?

A. I was to let him have it if he would give me what the land would come to after final proof; if the land had so much timber on it, why he was to give me so much a thousand, or million, or whatever it was.

Q. Well, that was your arrangement before you ever went up to the land, was it? A. Yes, sir.

Q. And he carried his part of the arrangement out?

A. Yes, sir.

Q. And you carried your part of it out, did you?

A. Yes, sir.

Q. And you got a little over \$200.00, and he got the land? A. Yes.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Drury M. Gam-

(Testimony of Drury M. Gammon.)

mon, dated May 12th, 1903, the nonmineral affidavit of the same date of Drury M. Gammon, the testimony of Drury M. Gammon at final proof, August 19th, 1903, and the cross-examination of Drury M. Gammon at the same time, all of which papers have been identified by the witness, the testimony of the witnesses at final proof, and the cross-examination of them, the receiver's receipt and [1877—1547] the register's certificate, dated August 19th, 1903, a certified copy of the patent issued to Drury M. Gammon, dated September 9th, 1904, all relating to the entry of the southeast quarter of the southeast quarter of section 26, and the southwest quarter of the southwest quarter of section 25, and the north half of the northeast quarter of section 35, township 40 north, of range 3 east, of Boise meridian, together with a certified copy of a deed made and executed by Drury M. Gammon, October 9th, 1903, conveying to Clarence W. Robnett, in consideration of \$1.00, the southeast quarter of the southeast quarter of section 26, the southwest quarter of the southwest quarter of section 25, and the north half of the northeast quarter of section 35, in township 40 north, of range 3 east, of Boise meridian, said deed being acknowledged before John E. Nickerson, a Notary Public of Nez Perce County, Idaho, October 9th, 1903, and recorded in the office of the Recorder of Shoshone County at the request of the Lewiston National Bank November 16th, 1904.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but

(Testimony of Drury M. Gammon.)

object to the admission of the same in evidence in support of bills No. 388 and 407, upon the ground that the entry is not involved in those two particular actions, irrelevant and immaterial. And the defendants severally object to the admission of the final proof papers in evidence in support of either of the actions, on the ground that they are matters relating to the final proof, occurring long after the filing of the sworn statement, irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 77, 77A, 77B, 77C, 77D, 77E, 77F, 77G, 77H, 77I, 77J, 77K, 77L, 77M, 77N, and 77-O.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Gammon, you never had any arrangement or agreement with Kester or Kettenbach regarding your claim, did you? A. No, sir. [1878—1548]

Q. You never had any conversation with them at all? A. No, sir.

Q. Neither of these gentlemen were present at any time when you talked with Clarence Robnett regarding it? A. No, sir.

Q. I believe you said that Clarence Robnett first wanted you to sell your right? A. Yes.

Q. And you told him you wouldn't do that?

A. No.

Q. Now, was it because he wasn't giving you money enough, or because you knew it was against the law to sell your right?

A. Well, I knew it was against the law.

Q. And you wouldn't take up a claim in that way?

(Testimony of Drury M. Gammon.)

A. No.

Q. Then your next arrangement was that he was to loan you what money you didn't have? A. Yes.

Q. And then if after you made final proof if you wanted to sell it back to him—sell it to him—why, you could? A. Yes, sir.

Q. There was no obligation on your part to sell it to him?

A. No; I didn't think I was doing anything wrong.

Q. And you took the claim in that way so as to comply with the law? A. How is that, George?

Q. You took the claim in that way so as to comply with the law? You didn't want to violate the law?

A. No.

Q. And you reached a price—an agreement as to the price that you was to have, after you made final proof? A. Yes, sir. [1879—1549]

Q. After you had proved up on it, then you checked up what timber there was on it and made the agreement then? A. Yes.

Q. As to what you was to get for it? A. Yes.

Q. And you had no agreement with him as to the price, or what you should receive, or that you would sell it to him in fact, before you made final proof?

A. No.

Q. Then the affidavit that you made at the time you filed your sworn statement, "that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly

(Testimony of Drury M. Gammon.)

or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that affidavit was true, was it?

A. Yes, sir.

Q. And you furnished all of your own money to pay for your expenses going up to the land, and the filing fees and the location fee? A. Yes, sir.

Q. And you borrowed the money from Robnett to pay the purchase price in the land office when you proved up? A. Yes, sir.

Q. And you gave him a mortgage for it?

A. Yes, sir.

Q. Now, how long after you got the land was it before you sold it to Robnett?

A. Well, as near as I can remember— Well, I want to ask a question on that: In taking up this claim, you know, after you make your final proof, there is a document sent back to Washington, is it, [1880—1550] or something to pay for?

Mr. GORDON.—That is the patent.

Mr. TANNAHILL.—That is the patent.

WITNESS.—Well, it was after I received that patent. I don't know how long it was.

Mr. TANNAHILL.—Q. Something like a year?

A. I guess it was.

Q. And you held the land during that time?

A. Yes, sir.

Q. And never sold it to anybody? A. No, sir.

(Testimony of Drury M. Gammon.)

Q. And you could have sold it to anybody, you say, if they had given you money enough for it?

A. Yes, sir.

Q. You was under no obligation to sell to Robnett unless you wanted to sell to him?

A. No; I wasn't under obligations to sell to anybody.

Q. And as I understood you, you have never had any conversation or agreement of any kind with Kester or Kettenbach? A. No, sir.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Gammon, do you remember of being in my office at Boise on the 22d day of February last?

A. Yes, sir.

Q. And do you remember having a talk with Mr. Smith and me about this case?

A. Yes, I remember talking with you.

Q. Now, do you remember making this statement to me, that about a month before you took up a timber claim, Clarence W. Robnett asked you if you wanted to take up a timber claim, and that you said "How [1881—1551] much would you give me clear of all expenses?" and he said he would give you \$150.00 for my right? Do you remember telling me that?

Mr. TANNAHILL.—Objected to on the ground that it is leading and suggestive, and cross-examination of his own witness.

Mr. GORDON.—Q. Do you remember telling me that?

(Testimony of Drury M. Gammon.)

A. I remember talking with you, but I don't remember telling you that way, Mr. Gordon.

Q. Will you say you didn't tell me that?

A. No, I am not disputing your word. I say I don't remember of telling it that way.

Q. Do you remember that you said this: "He said he would give me \$150.00 for my right, and I said I wouldn't sell my right for that amount, or less than \$200.00." Do you remember telling me that?

A. I remember telling you I wouldn't sell my right for \$150.00.

Q. And that you wouldn't sell it for less than \$200.00?

A. I don't remember. I might have said that.

Q. Do you remember saying this: "That Robnett said he would see me again"? A. Yes.

Q. "And in about a couple of weeks he did see me again. Robnett came back and said he would give me \$200.00 for my right, clear of all expenses, and I said all right." Now, don't you remember telling me that?

A. Well, I may have misunderstood you saying that we got \$200.00 out of the Clearwater.

Q. Well, this is before you went to the land office about this land. Didn't you tell me that that was the understanding you had with Robnett?

A. Well, I don't understand it that way. As I say, you might have misunderstood me in writing it down.

Q. No; I am asking you if you don't remember that—not how I [1882—1552] may have misunderstood you. I am asking you whether you told me that?

(Testimony of Drury M. Gammon.)

A. Well, I don't remember telling you that in that way. I remember having a talk and conversation with you about something, but I wouldn't swear to every word—

Q. Then I asked you who you were to turn this claim over to; do you remember that?

A. You asked me who I was going to turn it over to.

Q. And who did you tell me?

A. I told you all the improvements and everything on it I would turn it to Robnett—turn it back to him.

Q. You say that was your agreement with Robnett?

A. No, I don't remember saying that.

Q. Didn't you say you were—

A. Yes, he was to let me have what money I had to have to make my final proofs of it.

Q. And what were you to do with the claim?

A. Before I gave a mortgage to him, yes.

Q. Well, what were you to do with the claim?

A. What was I to do with the claim?

Q. Yes.

A. Why, if he was to give me what I wanted clear of all expenses for the land, with so much timber on it, I would let him have it if he wanted to.

Q. Wasn't that your agreement with him before you ever went to the land office? A. Oh, no.

Q. What did Robnett say to you about this claim the first time that you ever talked to him about it?

A. Well, I have repeated that. I told you he wanted to know—he asked me if I wanted to sell my right for \$150.00, and I told him no, I didn't want to sell my right for anything.

(Testimony of Drury M. Gammon.)

Q. Now, what were you to do to get that \$150.00 when you first [1883—1885] talked to him about it? Wasn't he to furnish all the money?

A. He never said that to me the first time, no.

Q. Now, how long after the first time did you talk to him again about it?

A. Well, as I said, I don't remember whether it was three weeks or a month or how long it was.

Q. Well, it was before you went to locate on the land that he saw you again? A. Yes, sir.

Q. What did he say on that occasion?

A. He asked me if I had figured on it, and I told him I had, and he asked me if I would go and take it up if he would furnish the money to make the final proof on it, and I said all right, I would give him a mortgage on the land, and he said, "All right, go ahead."

Q. What were you to do with the land?

A. Well, I was to sell it to him, or anybody I pleased.

Q. Wasn't you to sell it to him?

A. Not to him individually, if I didn't want to.

Q. Was there anything said about you not wanting to? A. No.

Q. What was he to furnish you the \$400.00 and expenses for?

A. Well, for the land, I guess, that I gave a mortgage on.

Q. What was there in it for him?

A. I don't know what there was in it for him.

Q. Wasn't it your understanding that you were

(Testimony of Drury M. Gammen.)

going to convey it to him when you took it up?

A. No, no particular understanding, no.

Q. Wasn't it an absolute agreement—not an understanding, but an absolute agreement between you and Clarence Robnett that if he would furnish the money that you would convey it to him for \$200.00 over what it cost you?

Mr. TANNAHILL.—We object to that as improper and unfair. The [1884—1554] witness has testified, and it seems like there is an effort now to get the witness to testify to something that is untrue.

Mr. GORDON.—All that I am trying to get him to testify to is what he has testified to before.

Mr. TANNAHILL.—Well, it makes no difference if he has made any statement before that is not true, he is supposed to state the truth now; and that is trying to take advantage of this witness.

Mr. GORDON.—Q. Who called your attention to this particular piece of land?

A. Why, it was Clarence Robnett.

Q. This very piece of land? A. Yes.

Q. And he told you that Washburn would show the land to you?

A. No. I was thinking about it. Well, Washburn—come to think about it—I believe told me that he knew a good piece of land if I wanted to take one up. I knew he was—well, I don't know what they call it—well, a fellow that locates you, I guess that's what they call them. But this piece of land that I filed on Mr. Robnett is the one that spoke about it.

(Testimony of Drury M. Gammon.)

He told me that piece was there if I wanted to take it.

Q. He told you the piece was there that you located on? A. Yes, sir.

Q. And that is the piece you located on and conveyed to him, is it not?

A. Well, it is the one I sold back to him, yes.

Q. And you got your \$200.00?

A. Yes—something over \$200.00.

Q. Well, how much over \$200.00?

A. Well, I won't say how much it was—a few dollars over, though.

At this time an adjournment was taken until tomorrow morning at ten o'clock A. M. [1885—1555]

On Tuesday, September 13, 1910, at 10 o'clock A. M., the hearing was resumed.

[Testimony of Michael J. Dowd, for Complainant.]

MICHAEL J. DOWD, a witness called on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Michael J. Dowd? A. Yes, sir.

Q. Where do you reside, Mr. Dowd?

A. Spokane.

Q. How long have you resided in this vicinity?

A. It must be about eight years now; very close to eight years.

Q. What was your business in February, 1906?

A. Woodsman.

Q. Were you a woodsman for yourself or were you connected with some company?

(Testimony of Michael J. Dowd.)

A. I was working for the Shevlin-Clark Company at that time.

Q. That is a timber company?

A. Yes, sir, a timber company, a timber holding company.

Q. Did you at that time know Mr. George H. Kester? A. Yes, sir.

Q. And Mr. William F. Kettenbach?

A. Yes, sir.

Q. And Mr. William Dwyer? A. Yes, sir.

Q. Were you acquainted with Mr. J. G. Fralick?

A. Yes, sir.

Q. Do you know what Mr. Fralick's employment was in February [1886—1896] 1906?

A. He was chief clerk for Shevlin & Clark at that time.

Q. Who was Mr. Flewelling?

A. Mr. Flewelling didn't come in on the scene for some time after that.

Q. Was he afterwards connected with the Shevlin-Clark Company?

A. Well, the Shevlin-Clark Company, as I understood it, sold out to what is called the Flewelling Company, the Monarch Timber Company; it was called the Monarch Timber Company after that.

Q. Now, in the fore part of February, 1906, did you have any dealings with either Mr. Dwyer or Mr. Kester, the defendants in this case, relative to their timber holdings?

A. I went down there with a letter from Mr. Fralick to Mr. Dwyer.

(Testimony of Michael J. Dowd.)

Q. The letter that you were given by Mr. Fralich to Mr. Dwyer, did you deliver that to Mr. Dwyer?

A. I delivered that to Mr. Dwyer, yes, sir.

Q. And you have not the original? A. No, sir.

Q. I show you what purports to be a copy of that letter, dated February 6th, 1906, and ask you if that is a copy of the letter?

A. I think that is about the same.

Q. That was signed—

A. J. G. Fralick.

Mr. GORDON.—I will read that letter in evidence.

Mr. TANNAHILL.—The defendants object to the letter upon the ground that it is immaterial, but make no point on the question of the identification of the letter.

Mr. GORDON.—(Reading:)

“William Dwyer,

Lewiston, Idaho. [1887—1557]

Dear sir: This will be presented to you by Mr. M. J. Dowd, whom I have sent down to take a general look at your timber. Give him all the information you can to enable him to report fully to me.

Yours truly,”

Q. You say the original of that letter was signed by J. G. Fralick? A. Yes, sir.

Q. Had you ever met Mr. Dwyer before that time?

A. I had met him in a general way different times as a woodsman, yes, sir.

Q. Had you had any negotiations with him at that time concerning his timber holdings? A. No, sir.

Q. And you were at that time, I understand, repre-

(Testimony of Michael J. Dowd.)

sending— A. Shevlin & Clark, yes, sir.

Q. And were making that visit to Mr. Dwyer as the representative of them? A. Yes, sir.

Q. And that letter was written by Mr. Fralick and was delivered to you, and you delivered it to Mr. Dwyer? A. Yes, sir.

Mr. TANNAHILL.—What volume have you got there, Mr. Gordon?

Mr. GORDON.—I have got volume 4, 1605.

Mr. TANNAHILL.—At what page are you reading?

Mr. GORDON.—1364.

Q. Do you remember how long after that letter was dated you delivered it to Mr. Dwyer?

A. I delivered it that same day, the 14th of February, if I [1888—1558] remember right.

Q. You delivered it to Mr. Dwyer shortly thereafter? A. Yes, sir.

Q. What did Mr. Dwyer do and say at the time that you delivered the letter?

A. He introduced me to Mr. Kester.

Q. What Mr. Kester? A. George H. Kester.

Q. Did you have any talk with Mr. Dwyer before he introduced you to Mr. Kester about this timber?

A. If I remember right, I told him I wanted it and was after it.

Q. What did you tell him you was after?

A. I told him I was after timber.

Q. Did you tell him what timber you were after?

A. Well, I was down to see about their timber.

Q. And he introduced you to Mr. George Kester?

A. Yes, sir.

(Testimony of Michael J. Dowd.)

Q. Where did you see Mr. Kester?

A. I saw Mr. Kester in the room off the bank; I think they call that the directors' room, if I remember right.

Q. What bank was that,—the Lewiston National Bank?

A. The bank Mr. Kester was connected with; I don't know what they did call it myself. It seems to me it was the First National Bank.

Q. No; it was the Lewiston National Bank.

A. The Lewiston National Bank.

Q. Did Mr. Dwyer remain with you and Mr. Kester? A. It seems to me he did, yes.

Q. Now, will you state the conversation that occurred between you and Mr. Dwyer and Mr. Kester.
[1889—1559]

A. Well, it was so long ago, Mr. Gordon, that I have pretty near forgotten all about it. If I remember right, I told him what I wanted, that I was representing Shevlin & Clark, and they were in the field to buy timber, provided they could get it in sufficient quantities to justify them to invest.

Q. What did Mr. Kester say?

A. He told me, if I remember right, that the timber was for sale.

Q. What timber?

A. Their timber; that they had timber for sale.

Q. And did you ask him anything about how long a time he would give you to look over the timber?

A. Yes; I wanted to get time sufficient to justify us in sending men in and looking over the timber, wanted time sufficient to look it over and notch it.

(Testimony of Michael J. Dowd.)

Q. What did Kester say?

A. He told me he didn't care to be tied up, if I remember right, but that he would give me a letter that would protect me just as well as notching it.

Q. Did he give you the letter? A. Yes, sir.

Q. And this conversation was still there in the bank, was it? A. Yes, sir.

Q. Did Mr. Kester prepare a letter for you?

A. I don't know who prepared it.

Q. Did he give you a letter?

A. He gave me a letter.

Q. I show you a letter dated February 14th, 1906, addressed to Shevlin-Clark Timber Co., signed George H. Kester, and ask you if that is the letter Mr. Kester gave you?

A. Yes, sir, I think that is the same letter. [1890—1560]

Mr. GORDON.—I will read the letter in evidence.

Mr. TANNAHILL.—I've got no objection to it; it's a pretty good letter.

Mr. GORDON.—(Reading:)

[**Exhibit No. 79.**]

“**LEWISTON NATIONAL BANK**
of Lewiston, Idaho.

Capital & Surplus \$200,000.

W. F. Kettenbach, President.

J. Alexander, Vice-President.

Geo. H. Kester, Cashier.

Lewiston, Idaho, Feb. 14, 1906.

Shevlin-Clarke Timber Co.,

Spokane, Washington.

Gentlemen:

Referring to our timber in the Clearwater Country, we will grant you the right to cruise the same, provided it is done before April 1st, and further provided that if you avail yourselves of this consideration, that you are to have cruisers on the land by the 25th of this month. Our prices on this land are as follows:

Land in Twp. 38-4-5-6, East; Twp. 39-5 & Twp. 40-6 East, at \$25.00 per acre; Lands in Twp. 39-4 East, \$30.00 per acre; Lands in Twp. 39-3 East at \$15.00 per acre.

It is a condition of this letter that in case you do not purchase this land, that you will furnish us your detailed estimates on our lands in the above townships.

Please acknowledge receipt, and if you intend to proceed here-under, acknowledge conditions herein.

Yours truly,

GEO. H. KESTER.”

(Testimony of Michael J. Dowd.)

Mr. GORDON.—I offer the letter in evidence.
[1891—1561]

Said letter was thereupon marked by the stenographer as Exhibit 79.

Mr. GORDON.—Q. Mr. Dwyer was present when that letter was handed to you by Mr. Kester?

A. Yes, sir.

Q. Now, was that letter written the same day you delivered the letter from Mr. Fralick to Mr. Dwyer?

A. Yes, sir.

Q. To whom did you deliver the letter that you have just identified as having been given you by Mr. Kester? A. J. G. Fralick.

Q. Well, now, was anything said about the description of their lands at that time that you were to go over?

A. They were to make out plats for me showing me the descriptions of the land.

Q. Now, what did Mr. Kester say about that?

A. He said his woodsman would make them out.

Q. Who was his woodsman? A. Mr. Dwyer.

Q. And did you and Mr. Dwyer go off to have the descriptions given you?

A. Yes, sir; we made one up; we started that evening and finished the next day.

Q. Where did you go to?

A. Upstairs to some room that Mr. Dwyer had over the bank building.

Q. And in what form did he give you these descriptions?

A. Gave them to me in township plats.

(Testimony of Michael J. Dowd.)

Q. I show you township plats of township 37, range 6 east, [1892—1562] township 38, range 6 east, township 38, range 5 east, township 38, range 4 east, township 39, range 3 east, township 39, range 4 east, township 39, range 5 east, township 40, range 6 east, all of Boise meridian, and ask you if they are the plats that Mr. Dwyer made out for you, representing their holdings of timber that you were to cruise and to go over with the view of buying them for the Shevlin-Clarke people?

A. Yes, sir; that is the—

Q. They are the plats, are they? A. Yes, sir.

Q. Now, do you remember whether these marks down the side of the plat, this on township 27, the figures in a circle in the left-hand corner, 25, and township 38, 25, and township 38, the figures at the bottom and the circle marked 25, and township 38—4, were the figures at the left-hand corner of the circle, 25, they represented the price per acre that those lands were to be sold for by Kester and Dwyer?

A. I don't know as to that, Mr. Gordon. The letter was sent to Mr. Fralick, explaining that, and that was inclosed, so I didn't see it.

Q. And did you deliver that letter that you have identified and these plats that you have identified to Mr. Fralick? A. Yes, sir, I did.

Q. And what date, relative to the date you received the letter and the plats from Mr. Kester and Dwyer?

A. I think I delivered those and the letter I received from Mr. Kester on the 16th of February; I

(Testimony of Michael J. Dowd.)

am pretty sure it was the 16th.

Q. As I understood, the marks in the various sections in the township plats that you have shows was the land that they represented as theirs, and that you were to look over with the view of purchasing?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. The plats show that the land was some they owned and some [1893—1563] that could be had; they didn't show that it was all their land.

Q. Which did they tell you was theirs and which wasn't theirs?

A. Those with the circles it seems to me were the lands that could be had, could be blocked up with theirs and—

Q. This letter referred to those plats, did it not?

A. Yes, sir.

Q. This letter says: "Referring to our timber in the Clearwater country, we will grant you the right to cruise the same, provided it is done before April 1st, and further provided that if you avail yourselves of this consideration, that you are to have cruisers on the land by the 25th of this month. Our prices on this land are as follows": Then it gives the figures, Mr. Kester in that letter refers to "our timber land." Now, what was said about—

A. He referred to his timber land but this other could be picked up or we could pick it up ourselves. It showed that it could be blocked up with this block of timber.

Mr. GORDON.—We offer those plats in evidence.

(Testimony of Michael J. Dowd.)

Said plats were thereupon marked by the stenographer as Exhibit 80.

Mr. TANNAHILL.—We object to the plats being admitted in evidence, upon the ground that they are irrelevant and immaterial.

Mr. GORDON.—Q. Did you talk with Mr. Kester further after you received those plats?

A. I don't remember that I did, Mr. Gordon.

Q. You said you delivered that letter and those plats to Mr. Fralick? A. Yes, sir.

Q. Do you know what Mr. Dwyer prepared those plats from?

A. It seems to me he had blue print township plats up in his room. [1894—1564]

Cross-examination.

(By Mr. TANNAHILL.)

Q. You knew that Mr. Dwyer was a timber cruiser, did you not, Mr. Dowd? A. Yes, sir.

Q. And you have been engaged in cruising timber to some extent yourself? A. Yes, sir.

Q. It is customary for timber cruisers to have blue prints and descriptions of the land that they have cruised, is it not? A. Yes, sir.

Q. And when you go out and cruise a tract of land for a man you make a record of it and keep that in your office, regardless of the fact that you may not buy the land? A. Yes, sir.

Q. You understood that Mr. Dwyer had cruised and estimated all of those lands offered by Mr. Dwyer and Kester, did you not?

A. I understood that he, being his woodsman, he

(Testimony of Michael J. Dowd.)

would have done it.

Q. By reason of the fact that he had cruised the timber and had these blue prints and descriptions in his office, you went up to his office to get the descriptions?

A. Yes, sir; because Mr. Kester said he was his woodsman.

Q. Mr. Kester or Mr. Dwyer neither one told you that Dwyer owned any interest in the lands, did they? A. No, sir, not that I know of.

Q. Mr. Dwyer didn't tell you that he owned any interest in the lands, did he? A. No, sir.

Q. And you didn't understand that he owned any interest in the lands? A. I did not. [1895—1565]

Q. Your understanding was that the lands belonged to Kester and Kettenbach? A. Yes, sir.

Q. This plat was not handed to you for the purpose of showing title to these lands, was it?

A. I didn't understand it that way; I understood it was lands that could be controlled and had in this vicinity.

Q. And on that plat you understood there was some lands of relatives of Kester and Kettenbach that could be purchased, did you not?

A. I didn't know whether they were relatives or not, but lands that could be had in that vicinity.

Q. And those lands marked by a circle, you understood that they was lands that were neither owned nor controlled by Mr. Kester and Mr. Kettenbach?

A. I understood they was outside lands, owned by

(Testimony of Harvey J. Martin.)

individual holders, I understood at the time.

Mr. TANNAHILL.—That is all. [1896—1566]

[Testimony of Harvey J. Martin, for Complainant.]

HARVEY J. MARTIN, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Harvey J. Martin?

A. Yes, sir.

Q. Where do you reside, Mr. Martin?

A. South 419 Stevens, Spokane.

Q. You live at Spokane, Washington?

A. Yes, sir.

Q. How long have you lived at Spokane?

A. Oh, I have lived here about 24 years.

Q. Do you know Mr. J. B. West, of Lewiston, Idaho? A. Yes, sir.

Q. Do you know the defendants, Kester, Kettenbach and Dwyer? A. Yes.

Q. How long have you known Mr. West?

A. Oh, I have known him for about a little over two years, I guess.

Q. And will you state whether or not you ever had any timber transactions with Mr. West? This is merely preliminary.

A. Well, yes. I don't know as you would call them transactions. We had a whole lot of correspondence with reference to timber deals that we were trying to work up. They were never consummated.

Q. Now, I will ask you whether or not you and Mr.

(Testimony of Harvey J. Martin.)

West entered into an agreement by which he was to pick up a number of timber claims that he was to purchase from the entrymen, and that you were to finance the scheme? A. Yes.

Mr. TANNAHILL.—We object to that as irrelevant and immaterial.

Mr. GORDON.—I say it is just leading up to the transactions as [1897—1567] to which I wish to inquire about later.

Q. Well, did you ever consummate that arrangement with Mr. West? A. I never did.

Q. Now, did Mr. West ever bring you in contact with Mr. Dwyer and Mr. Kester and Mr. Kettenbach, relative to their timber holdings?

A. Yes; he brought me in touch with Kettenbach and Dwyer.

Q. Well, now, state when that was.

A. It was on the 24th of November, 1909.

Mr. TANNAHILL.—Did you say Kettenbach and Dwyer, or Kettenbach and Kester?

A. Kettenbach and Dwyer were the people I met in Lewiston. Kester was here at the time.

Mr. GORDON.—Q. I show you a letter dated Lewiston, Idaho, November 23, 1909, addressed H. J. Martin, Esq., and signed J. B. West. I will ask you whether you received that letter? A. Yes.

Q. Through the mails, in due course?

A. Yes, sir.

Q. And you are acquainted with the signature of J. B. West? A. Yes, sir.

Q. And that is his signature to that letter?

(Testimony of Harvey J. Martin.)

A. That's right.

Mr. GORDON.—I offer the letter just identified by the witness in evidence.

Mr. TANNAHILL.—Objected to as immaterial.

Said letter was thereupon marked by the Reporter as Exhibit 81.

Mr. GORDON.—Q. Now, state what Mr. West said to you, and whether or not he was representing or represented that he was representing Kester, Kettenbach and Dwyer relative to their timber land.

A. He told me that he could handle their timber lands. [1898—1568]

Q. Well, now, proceed and tell what he said, and what you did in response to his requests?

Mr. TANNAHILL.—We object to that as immaterial.

Mr. GORDON.—Answer the question.

A. As near as I can remember it was some time prior to the date of this contract, probably some several weeks; I met Mr. West in Spokane here, and our other scheme wasn't progressing very rapidly, and he suggested that he could get the Kester-Kettenbach tract any time at a very reasonable price, and we talked over the details at the time about what he could get it for, and I made out a list of data on it so that I could put up a kind of a preliminary proposition to the intending purchaser, and went to work on it; and we put the Kester and Kettenbach tract up in three or four different places—offered it for sale—and among others it came up to this man Bissell.

(Testimony of Harvey J. Martin.)

Q. Who is Bissell?

A. He is the man that was supposed to represent these purchasers for whom we got this contract—this option of ten days—and they drew up—or at least that is the way it was represented to me; I didn't see them do it—that form of contract there that I carried down to Lewiston.

Q. Who drew this up?

A. These clients of Bissell's, supposedly; that is what I was told.

Q. And you were operating with them?

A. Yes, sir.

Q. With a view of having them buy the Kester, Kettenbach and Dwyer lands; is that right?

A. They represented that if I could get that signed up by the owners that they could make a deal of it.

Q. And you went to Lewiston, and did you meet Mr. West? A. Yes.

Q. And that was on the 24th of November, 1909, was it not? [1899—1569]

A. Yes, sir. I remember it because it was Thanksgiving.

Q. And did Mr. West introduce you to Mr. Dwyer and Mr. Kettenbach? A. Yes.

Q. William F. Kettenbach. A. Yes, sir.

Q. And Mr. William Dwyer?

A. Yes, sir; he introduced me to William Dwyer and William F. Kettenbach.

Q. Now, where did this introduction take place?

A. In Mr. West's office.

Q. I show you a blank form of a contract, dated

(Testimony of Harvey J. Martin.)

November, 1909, and I will ask you whether or not that is the contract you have referred to that Bissell suggested that you get signed up by the owners?

A. Yes, sir; that is the one I carried to Lewiston.

Q. And when you carried that to Lewiston what did you do with it?

A. I submitted it to Mr. West and he in turn submitted it to Mr. Kettenbach, and Mr. Kettenbach said that he would draw up a contract, or have one drawn up, as a substitute for that; he wouldn't agree to that.

Mr. GORDON.—I offer that blank form of contract in evidence.

Mr. TANNAHILL.—Objected to on the ground that it is irrelevant, incompetent and immaterial.

Said blank form of contract was thereupon marked by the Reporter as Exhibit 82.

Mr. GORDON.—Q. And did Mr. Kettenbach proceed to have prepared a contract on that day?

A. Yes, sir.

Q. I show you a contract dated November 24th, 1909, or a memorandum of agreement as it is headed, in which it is agreed to sell to J. B. West certain property therein mentioned, and signed W. F. Kettenbach [1900—1570] and George H. Kester. I will ask you whether or not that is the contract that Mr. Kettenbach had prepared? A. Yes, sir.

Q. And that is his signature to it? A. Yes, sir.

Q. And was it signed by Mr. West at that time?

A. No, it wasn't signed by Mr. West; it was signed by Mr. Kettenbach.

(Testimony of Harvey J. Martin.)

Q. Was that delivered to you by Mr. Kettenbach?

A. Yes, sir.

Q. And did you see it signed by Mr. Kester?

A. Yes, sir.

Q. Where was that?

A. That was in Mr. Kester's office in the Mohawk building.

Q. In Spokane? A. Yes, sir.

Q. And you took the contract there for that purpose, for him to sign? A. Yes, sir.

Mr. GORDON.—We offer that contract in evidence.

Mr. TANNAHILL.—Objected to on the ground that it is irrelevant, incompetent and immaterial.

Said contract was thereupon marked by the Reporter as Exhibit 83.

Mr. GORDON.—Q. Now, at the time of the signing of that contract was a plat given you by Mr. Kettenbach? A. Yes, sir.

Q. I show you plat signed George H. Kester and William F. Kettenbach, and pencil marks drawn through the signatures of them, and ask you if you know that to be the signatures of William F. Kettenbach and George H. Kester to that plat?

A. Well, I never saw those signatures put on.
[1901—1571]

Q. What is that?

A. I never saw those signatures put on this plat.

Q. No, but I mean from your knowledge of their signatures, are they their signatures?

A. Well, I judge from looking at the signatures

(Testimony of Harvey J. Martin.)

on the other contract that they were the same.

Mr. GORDON.—Is there any contention that they are not the signatures of Kester and Kettenbach, that have been marked out with lead pencil?

Mr. TANNAHILL.—Why, I don't know. I haven't examined them. (Said plat was handed to Mr. Tannahill, who examined the same.)

Mr. TANNAHILL.—I think they are, still I don't know, but I believe they are, though.

Mr. GORDON.—Q. And you say that that plat was given you by Mr. William F. Kettenbach just after the signing of that contract?

A. I don't know whether it was after or before, but it was right at that time.

Q. Now, what did he say about that plat at that time?

A. Well, he gave me that plat in answer to my demands for some kind of a checking of the property, in order to present to my people along with this contract when I returned, or this option.

Q. Well, what property did that represent?

A. That was supposed to represent the property that they had optioned to some other people prior to this time.

Q. Well, whose property was it represented to be?

A. Well, it was supposed to be the property that they were selling us, or nearly so. Of course, he stipulated that that plat was not exactly correct, but that he would later furnish me with a correct plat, and this one could be used as a substitute in the

(Testimony of Harvey J. Martin.)

meantime in the preliminary negotiations for this purchase.

Q. Well, was anything said about whether it was a plat of their [1902—1572] holdings, or property that they represented?

A. He said that was approximately a plat of their timber proposition, as I remember it.

Q. Well, did he say whether it was their property, or property that they represented?

A. Well, I couldn't swear exactly what was said. I know what my impression was.

Q. Well, what was your impression?

A. My impression was that that was representing their property—that plat—approximately.

Mr. GORDON.—We offer that plat in evidence that has been identified by the witness.

Mr. TANNAHILL.—Objected to as irrelevant, incompetent and immaterial.

Said plat was thereupon marked by the Reporter as Exhibit 84.

Mr. GORDON.—Q. Now, did anyone give you a revised plat of that property later? A. Yes, sir.

Q. Who gave you that?

A. Mr. William Kettenbach.

Q. And where did he give you that plat?

A. In my office.

Q. At Spokane?

A. He made it in my office from data that he had in his possession when he came up.

Q. Now, do you know what you did with that plat?

A. I turned it over to this man Bissell.

(Testimony of Harvey J. Martin.)

Q. And do you know what became of it when Mr. Bissell returned it?

A. Why, I am a little bit in doubt as to whether Mr. Bissell ever returned that. I am inclined to believe that Mr. William Kettenbach [1903—1573] turned over to me these township plats which he brought up with him in order to make the main plat there.

Q. Yes?

A. I am of the opinion that he turned these over to me, and those are the plats that I turned back to Mr. George Kester, and I believe that the originals that Mr. Kettenbach made from this is still in the possession of these people, whoever they are, I don't know; I never met them.

Q. Well, did you make a copy of that plat?

A. Yes.

Q. And have you a copy of it here?

A. That is a copy that I made, right there.

Q. And this is an exact copy of the plat that Mr. William F. Kettenbach delivered to you?

A. Yes, sir, that is a copy of it.

Q. And this chart is identically the same as the one that Mr. Kettenbach—

A. I made that myself from the one that he attached here.

Mr. GORDON.—Now, we offer this plat and chart attached in evidence.

Mr. TANNAHILL.—Objected to on the ground that it is irrelevant and immaterial.

Said plat with chart attached was thereupon

(Testimony of Harvey J. Martin.)

marked by the Reporter as exhibit 85.

Mr. GORDON.—Q. Now, I notice across the top of that chart, “township 37, 5 east, B. M.,” and then another column headed “Clear title,” then four X’s adjoining, and then “Lites pendentes,” and underneath that “5C,” and then to the right of that “Final Receipt.” I wish you would explain that chart as Mr. Kettenbach explained it to you.

A. Well, that is in explanation of the plat.

Q. Yes. [1904—1574]

A. These marked “X,” these four, these represent forties, you see.

Q. And what does this represent?

A. Well, that would represent four forties in that township.

Q. Those were township 37, 5 east, Boise meridian? A. Yes, sir.

Q. And then, under the head of “Clear title” is “4-X.” Now, will you explain what that means?

A. That means that there is four forties in that particular township upon which the title is clear.

Q. And then, in the same township there are five forties that there is a lis pendens on; is that right?

A. Yes.

Q. And then, the numbers under “Final Receipt” mean that final receipts have issued in the several townships to the several forties there represented?

A. Yes, sir.

Q. Now, in your talk with Mr. Kettenbach at the time that he signed this contract that you have identified of November 24th, 1909, did he tell you or in-

(Testimony of Harvey J. Martin.)

dicating whose property he was giving you an option on? A. Well, I understood it was theirs.

Q. Who do you mean by "theirs"?

A. Well, I supposed at that time that it belonged to Mr. Kettenbach and Mr. Kester.

Q. And who led you to believe that?

A. Well, I assumed that from my conversation with Mr. West. He was talking all the time about selling the Kester and Kettenbach tract of timber.

Q. And you say Dwyer was present at these conversations?

A. Yes, he was present on the 24th.

Q. And was anything said between Mr. Kettenbach and you and Mr. [1905—1575] Dwyer to indicate that Mr. Dwyer had an interest in that property?

A. Well, not that I recall, upon that date.

Q. Well, subsequent to that did Mr. Kettenbach—

A. Well, I think it was after that that Mr. West told me that Mr. Dwyer had an interest—a small interest.

Mr. TANNAHILL.—I move to strike out that answer, on the ground that it is irrelevant and immaterial, and a statement made by a third party and not in the presence of either of the defendants, and the defendants could not be bound by it.

Mr. GORDON.—Q. Well, was Mr. West present at the time that arrangements were made between you and Dwyer and Kettenbach about the signing of that contract?

A. He was present at the conference between Mr.

(Testimony of Harvey J. Martin.)

Kettenbach and Mr. Dwyer and myself; Mr. Kester was not there.

Q. Was Mr. Dwyer consulted about the signing of that contract?

A. He was consulted quite extensively at that meeting in reference to the character of the timber, and in reaching a decision there upon the percentages of the different species that were inserted in the contract, as I remember. They seemed to look upon him as being the practical timber man. I supposed at the time he was simply their cruiser. I didn't know that he had an interest.

Q. And was anything said about the interest that Kester had in the land?

A. Why yes; it was understood that that contract was subject to Mr. Kester's signature.

Q. Well, was anything said about the character of the interest that he had?

A. Not that I know of at that time, no.

Q. And was anything said later about the holdings of Kester and Dwyer?

A. Yes; there was once after that Mr. West told me that Mr. [1906—1576] Kester—

Mr. TANNAHILL.—Now, we move to strike out—we object to any statement of the witness relative to what Mr. West told him, unless the other defendants were present.

Mr. GORDON.—Answer the question.

A. Mr. West intimated that Mr. Kester's holding was of a minor nature, and that William Kettenbach—I was led to believe that William Kettenbach

(Testimony of Harvey J. Martin.)

was practically the whole thing; that is, that he was the man that we had to agree with, and that everything else would be all right, and that he would line the others up; that was the intimation.

Q. And who were the others he was to line up?

A. Mr. Kester and Dwyer, I suppose.

Q. I show you a letter here dated December 2, 1909, addressed H. J. Martin, signed Kester & Kettenbach, by George H. Kester. I will ask you whether or not Mr. Kester presented that to you?

A. He did.

Q. And what were the circumstances of his presenting that to you?

A. Well, Mr. Bissell came to me—

Mr. GORDON.—One minute just before that. I offer that letter in evidence, and read it into the record. (Reading:)

[Exhibit No. 86.]

“Dec. 2nd, 1909.

“Mr. H. J. Martin,

“City.

“Dear Sir:—

“This is to certify that the Lewiston National Bank has no interest in our timber holdings.

“Yours truly,

“KESTER & KETTENBACH,

“By GEO. H. KESTER.”

Said letter was thereupon marked by the Reporter as Exhibit 86.

Mr. GORDON.—Q. Now, what were the circumstances of Mr. Kester writing that [1907—1577]

(Testimony of Harvey J. Martin.)

letter and presenting it to you?

A. Well, Mr. Bissell was supposed to represent these intending purchasers, and he came to me and asked that question.

Q. What question?

A. He asked me if this particular bank had any interest in this timber, and I told him that I really didn't know, but I didn't think so. He says, "Can you get a statement from them in which they set forth that this bank has no interest?" and I says, "I guess I can, if that is the fact," and so I went and asked Mr. Kester about it, and he said that the bank had no interest, and I asked him if he would give me a signed statement to that effect, and he said he would, and that is what he gave me.

Q. And that had reference to the timber set out in this plat which you have identified, and referred to in the plat? A. Yes, sir.

Q. I show you a letter dated November 24th, 1909, signed J. B. West, and purporting to be an authorization from J. B. West to H. J. Martin to exercise power vested in him in the memorandum of agreement that is in evidence, and I will ask you if that is Mr. West's signature to that paper, and if you received that in due course through the mail?

A. Why, that is his signature, and my recollection is that I received it there right in his office.

Q. He gave it to you then? A. Yes.

Mr. GORDON.—I offer that letter in evidence.

Mr. TANNAHILL.—Objected to as immaterial.

Said letter was thereupon marked by the Reporter

(Testimony of Harvey J. Martin.)

as Exhibit 87.

Mr. GORDON.—Q. I show you a letter dated December 2d, addressed H. J. Martin, signed J. B. West, and ask you if you received that letter from Mr. J. B. West? A. Yes, sir. [1908—1578]

Mr. GORDON.—I offer that letter in evidence.

Mr. TANNAHILL.—I object to it upon the ground that it is irrelevant, incompetent and immaterial.

Said letter was thereupon marked by the Reporter as Exhibit 88.

Mr. GORDON.—Q. I show you a letter dated December 25th, 1909, addressed H. J. Martin, signed J. B. West, and ask you if you received that letter from Mr. West?

A. Yes, sir.

Q. That is his signature, is it not?

A. Yes, sir.

Mr. GORDON.—We offer that letter in evidence.

Mr. TANNAHILL.—Objected to as irrelevant, incompetent and immaterial, and hearsay, and it cannot be binding upon the defendants.

Said letter was thereupon marked by the Reporter as Exhibit 89.

Mr. GORDON.—Q. I show you a letter dated December 28th, signed H. J. Martin, addressed to J. B. West, and ask you if that is a copy of the letter which you sent to Mr. West? A. Yes, sir.

Mr. GORDON.—We offer that in evidence.

Mr. TANNAHILL.—Objected to as irrelevant, incompetent and immaterial.

Said letter was thereupon marked by the Reporter

(Testimony of Harvey J. Martin.)

as Exhibit 90.

Mr. GORDON.—Q. I show you a letter dated December 24th, 1909, addressed to J. B. West, Lewiston, Idaho, and ask you if that is a copy of a letter you wrote and mailed to Mr. J. B. West?

A. Yes, sir.

Mr. GORDON.—I offer this letter in evidence.

Mr. TANNAHILL.—The same objection.

Said letter was thereupon marked by the Reporter as Exhibit 91. [1909—1579]

Mr. GORDON.—Q. I show you a letter dated December 30th, 1909, addressed to H. J. Martin, which purports to be signed by J. B. West, and I will ask you if that is the signature of J. B. West, and whether you received that in due course?

A. Yes, sir.

Q. On or about the date it bears? A. Yes, sir.

Mr. GORDON.—I offer that letter in evidence.

Mr. TANNAHILL.—The same objection.

Said letter was thereupon marked by the Reporter as Exhibit 92.

Mr. GORDON.—Q. Did you ever have a talk with Mr. Kester about giving you a commission on this matter?

A. No, I don't remember of ever having a talk with him on the commission. The commission was all provided for. We got the proposition on a net price, with commission added. I can tell you the circumstance of what suggested that to you, probably.

Q. I wish you would?

(Testimony of Harvey J. Martin.)

A. Mr. Kester came into my office after this option had expired, and we were still working on it and expecting these people to come through, and informed me that I need not put any further labor on it; that they would not sell now—at that time—and that is what brought out all this information about me getting the impression that Mr. Kester was a minor factor in the deal, because I immediately took up my troubles with West in regard to that, and he told me never to mind him; that Billy was the only one to see, and he thought he would come through.

Q. I show you a letter dated January 31st, 1910, Lewiston, Idaho, and addressed H. J. Martin, Esq., and ask you whether that is J. B. West's signature to that letter? A. Yes, sir. [1910—1580]

Q. And you received that in due course through the mail, did you? A. Yes, sir.

Mr. GORDON.—We offer that letter in evidence.

Mr. TANNAHILL.—The same objection.

Said letter was thereupon marked by the Reporter as Exhibit 93.

Mr. GORDON.—Q. I show you a letter dated February 5th, 1910, Lewiston, Idaho, addressed to H. J. Martin, Spokane, signed J. B. West, and ask you if that is J. B. West's signature to that letter?

A. Yes, sir.

Q. And whether or not you received it in due course through the mail? A. I did.

Mr. GORDON.—We offer that letter in evidence.

Mr. TANNAHILL. The same objection.

(Testimony of Harvey J. Martin.)

Said letter was thereupon marked by the Reporter as Exhibit 94.

Mr. GORDON.—Q. Mr. Martin, all of this correspondence which you have identified here has reference to the property contained in the memorandum of agreement that you have identified and which is in evidence, and the plat that was delivered to you by Mr. Kettenbach several days later, which you have identified by a copy? A. Yes, sir.

Cross-examination.

(By Mr. TANNAHILL.)

Q. What Government official did you first talk to in regard to your business transactions with Mr. West?

A. That is a hard question to answer. The first one that I actually knew to be an official was Mr. Johnson and Mr. Smith together, I think, in Boise.

Q. In Boise? A. Yes, sir. [1911—1581]

Q. Did you talk with anyone before that whom you supposed was a Government official?

A. Well, what I meant by that intimation, I probably talked in my office with agents of the Government in connection with this land deal, but I supposed at the time they were *bona fide* timber purchasers.

Q. Was that before or after you took up this correspondence with Mr. West?

A. Well, it was during the time that I was corresponding with Mr. West.

Q. During the time? A. Yes.

Q. And did you tell these people about your cor-

(Testimony of Harvey J. Martin.)

respondence with Mr. West—those parties who were talking to you then?

A. Oh, I think I quoted Mr. West pretty generally, and relied on Mr. West to handle that end of the deal.

Q. Now, had you any talk with anyone whom you thought was a Government official before that?

A. No. I didn't think—I had no suspicion that they were Government officials at the time. I have simply reached that conclusion since.

Q. And did you take these letters and correspondence with you to Boise when you went down there?

A. Yes, sir.

Q. And you submitted them to Mr. Smith and Mr. Johnson down there, did you? A. Yes, sir.

Q. And where has this correspondence been since that time?

A. It has been in the possession of the Government officials, I suppose; it hasn't been in mine.

Q. Now, you say that something happened in these transactions that gave you the impression from what Mr. West said or represented, that Mr. Dwyer had some interest in this land. What was it that gave [1912—1582] you that impression?

A. Well, I had a conversation with West—you see we were in the attitude of our option having expired, that we were virtually dependent upon their good graces in the way of consummating the deal, provided these people we had on came through; we were expecting them all the time to come through and close the deal; and our options had expired in the

(Testimony of Harvey J. Martin.)

meantime, and we were discussing *pro* and *con* our chances of delivering in case they did come through, and Mr. West mentioned what Mr. Dwyer said, and I says, "What has he got to do with it?" "Well," he says, "he is a part owner."

Q. Now, didn't he say that—didn't you also get the impression that there was 2,000 acres of land owned by Mr. Dwyer, or Kittie E. Dwyer, his wife, that stood in the name of Kittie E. Dwyer, that was included in this option?

A. No; there was no mention of any segregated portion at all. I simply supposed that he owned an undivided interest in the whole of it.

Q. But that is all that was said to you about his owning an interest, was it, that you have mentioned?

A. Practically, yes.

Q. And you didn't know whether Mr. Dwyer owned, or Kittie E. Dwyer owned, and which of course Mr. Dwyer was interested in because of his being the husband of Kittie E. Dwyer and handling her business—you didn't know anything about that separate 2,000 acres being included in this other deal, did you? A. No.

Q. And that might have been what Mr. West referred to as Mr. Dwyer being interested in the land?

A. I couldn't say what he meant. That is the impression I got, that Dwyer was a part owner.

Q. Now, Mr. Kettenbach nor Mr. Kester never told you that Mr. Dwyer was interested, did they? [1913—1583] A. Not that I remember of.

Q. And Mr. Dwyer never told you that he had any

(Testimony of Harvey J. Martin.)

interest in it? A. No.

Q. And it was handled as the Kester and Kettenbach land, was it not?

A. That is the way it was put up to me in the first place, yes.

Q. And you simply took an option? Mr. West got an option from Kester and Kettenbach?

A. Yes.

Q. And you and Mr. West was simply trying to sell the land? A. Yes, sir.

Q. To sell it to third parties? A. Yes, sir.

Q. And that was the result of your negotiations, and what brought about these letters and the correspondence between you, was it?

A. Well, the correspondence was principally due to the deal in getting our people to come through with the money, and we were trying to hold them in line.

Q. Now, that plat which was given to you, and which you identified, was the one that was given you by Mr. Kettenbach, was it?

A. This plat that is here?

Q. Yes.

A. No; that is a copy that I made from the one that he made.

Q. You made it from the one that he made?

A. Yes, sir.

Q. Now, you don't know whether that plat includes 2,000 acres of land belonging to Kittie E. Dwyer or not, do you? A. No, I don't.

Q. And you don't know that the land that is in-

(Testimony of Harvey J. Martin.)

cluded in that plat all belongs to Kester and Kettenbach, do you? A. No, I don't.

Q. You haven't checked up the abstracts of title? [1914—1584] A. No, sir.

Q. To see whether it did or not? A. No, sir.

Q. And you don't know whether that includes the Kester and Kettenbach lands, or whether it also includes some lands of their relatives which they could sell, or thought they could sell, with their lands? Was there anything said about that? A. No, sir.

Q. And it might have included that, as far as you know? A. Yes, sir.

Q. What was the aggregate acreage included in your negotiations? A. 20,000, I believe.

Q. 20,000 acres? A. Yes, approximately.

Q. And that included all of the lands that you had any talk about? A. Yes, sir.

Q. Now, wasn't it "at least so many acres, and not to exceed 20,000 acres"?

A. 20,000 acres was placed as the maximum that they would be able to deliver under any conditions.

Mr. GORDON.—The contract sets that out—not less than 15,000 nor more than 20,000.

Mr. TANNAHILL.—Q. Now, didn't they want to leave a leeway there, so that they could put in other lands, and if they couldn't get those other lands that they would not be under obligations to sell it?

A. Well, that wasn't the reason that I understood. Now, of course, I wouldn't say positively what their reasons were, because I don't know; but the impression I got was that they were to be guided largely

(Testimony of Harvey J. Martin.)

by these lands that were in a legal controversy, as to the amount of them that they could deliver. [1915—1585]

Q. But there was no specific statement concerning their reason for that, was there?

A. No. That was naturally understood. He set forth in his description there the amount of lands that were in controversy, and the amount that was clear, and so on.

Q. And the amount clear was something like 15,000 acres?

A. No. At that time I think he only claimed a trifle over 10,000 acres absolutely clear, that he could deliver without question—of any question. Of course, there was some of them that the final receipt had been issued for, but the patent had not, that there was still a question about.

Q. And your deal fell through with, and was never carried through?

A. Yes, sir—that is, to my knowledge.

Mr. TANNAHILL.—That's all.

Mr. GORDON.—That's all.

At this time an adjournment was taken until tomorrow morning at ten o'clock. [1916—1586]

On Wednesday, the 14th day of September, 1910, at ten o'clock A. M., the hearing was resumed.

[Testimony of Rowland A. Lambdin, for Complainant.]

ROWLAND A. LAMBDIN, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

(Testimony of Rowland A. Lambdin.)

Direct Examination.

(By Mr. GORDON.)

Q. Will you please state your full name?

WITNESS.—Why, your Honor the Judge, whoever is presiding over the court here, I am under indictment, and I claim my privilege of not giving any testimony whatever. It might tend to—

Q. Your name is Rowland A. Lambdin, isn't it?

(No answer.)

Q. What are your grounds for not answering, Mr. Lambdin?

A. I told you I was under indictment.

Q. Mr. Lambdin, you are not under an indictment now. A. So I understand I am.

Q. All the indictments against you and all of the other defendants have been dismissed.

A. Even at that, if I should testify in these cases, and if my testimony would conflict with the testimony when it was given before, there is no reason why I might not be indicted again, and I still claim that privilege of not testifying.

Q. Well, are you the Rowland A. Lambdin who testified in these cases before against Kester, Kettenbach and Dwyer?

A. I believe I have stated I don't care to testify.

Q. You can tell your name, can't you? Will that tend to incriminate you? A. It might.

The SPECIAL EXAMINER.—You have been sworn, Mr. Lamblin as a witness, and you are here as a witness, and I don't know what reason you have for not answering. Mr. Gordon says you are

(Testimony of Rowland A. Lambdin.)

not under indictment. [1917—1587] If it is because you are afraid of incriminating yourself in giving your testimony, why that is a statement you can make. There is not any reason why a witness should come before a Court and refuse to answer, without some good reason. He puts himself in a position, if he is reported up to the Judge of this court, where he would probably be arrested for contempt of court, because you are here under process of the court.

WITNESS.—Well, your Honor, I stated my reason. I am under indictment, and I claim my privilege of not testifying. I have heard of no such dismissal as Mr. Gordon says it was dismissed.

The SPECIAL EXAMINER.—Mr. Gordon represents the Government, and he knows whether there is an indictment standing against you or not.

WITNESS.—It stood against me six months ago, and I don't see why it shouldn't stand now, as I have not been under the jurisdiction of the court since that time. If I give testimony in this case conflicting with testimony I had given before, I have no assurance that I will not be reindicted; so I claim my privilege of not testifying.

The SPECIAL EXAMINER.—What do you want to do in the matter, Mr. Gordon?

Mr. GORDON.—I will ask to have the matter certified to Judge Dietrich.

The SPECIAL EXAMINER.—Well, you may prepare a certificate, and I will certify it up.

Mr. GORDON.—Your name is Rowland A. Lambdin, is it?

(Testimony of Rowland A. Lambdin.)

A. Yes, sir.

Q. Where do you reside now, Mr. Lambdin?

A. Spokane, Washington.

Q. Did you ever reside at Lewiston, Idaho?

A. Yes, sir.

Q. And when did you reside there?

A. I came to Lewiston, Idaho, about ten years ago. [1918—1588]

Q. Did you reside at Lewiston on April 25th, 1902, as well as you can remember, Mr. Lambdin?

A. I believe I did.

Q. And how long after that time?

(No answer.)

Q. Oh, approximately?

A. About a year, I should judge.

Q. And you haven't lived at Lewiston since then?

A. Since 1903?

Q. Yes. A. I lived there one year since then.

Q. And when was that?

A. That would be, I believe the year—the fall of 1905 and part of 1906, if I remember rightly.

Q. And do you know the defendants, and did you know them at that time, William F. Kettenbach, George H. Kester and William Dwyer? A. I did.

Q. That was in 1902, when you lived there that time you referred to? A. Yes, sir.

Q. Now, did you take up a claim under the timber and stone act, April 25th, 1902?

(No answer.)

Mr. GORDON.—It is stipulated by and between the parties in open court that the witness Rowland A.

Lambdin is the same person who made timber and stone lands sworn statement April 25th, 1902, and filed the same in the land office at Lewiston, Idaho, on that date, for the purchase of the southwest quarter of section 29, township 42 north, of range 1 west, Boise meridian, and that he made final proof, and that receiver's receipt was issued to him July 22d, 1902, and register's certificate was issued to him for the same land on the same date. It [1919—1589] is further stipulated that the witness Rowland A. Lambdin is the same person who testified on behalf of the United States in the case of the United States vs. William F. Kettenbach, George H. Kester and William Dwyer, in the United States District Court at Moscow, Idaho, in May, 1907. And it is further stipulated that the witness is the same Rowland A. Lambdin who appeared on behalf of the Government in the cases of the United States vs. the same defendants, Kester, Kettenbach and Dwyer, in the United States District Court at Boise, Idaho, in February, 1910, and that he claimed his privilege, that the matter with reference to which he was inquired of might tend to incriminate him, on the ground that he was under indictment.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Rowland A. Lambdin, dated April 25, 1902, and filed in the land office at Lewiston, Idaho, at the same date, the non-mineral affidavit of Rowland A. Lambdin, bearing the same date, the testimony of Rowland A. Lambdin given at the final proof, April 25, 1902, the cross-ex-

amination of Rowland A. Lambdin at the final proof, of the same date, the testimony of the witnesses at final proof, and the cross-examination of them, the receiver's receipt and the register's certificate dated July 22, 1902, all of said papers being the original files of the United States land office at Lewiston, Idaho, and relating to the entry of the southwest quarter of section 29, in township 42 north, of range 1 west, of Boise meridian. We also offer in evidence a certified copy of the patent issued to Rowland A. Lambdin, and dated January 28, 1904, conveying the same described tract of land. We also offer a certified copy of a deed dated July 22, 1902, made by Rowland A. Lambdin and wife Marion P., conveying to W. F. Kettenbach and George H. Kester, in consideration of \$800.00, the southwest quarter of section 29, in township 42 north, of range 1 west, of Boise meridian; that said deed was properly executed and acknowledged before H. K. Barnett, a Notary Public for Nez Perce County, Idaho, July 22, 1902, and recorded at the request of the Latah County Abstract Company in the office of the Recorder of Latah County, Idaho, June 8, 1903. [1920—1590]

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to the admission of any thereof, in support of bills No. 388 and 407, upon the ground that the entry of the witness is not involved in those two particular actions, and they are irrelevant and immaterial. And the defendants severally object to the admission of any of the final proof papers in evidence in sup-

port of either of the actions, upon the ground that the same is irrelevant and immaterial.

The Reporter thereupon marked said documents as Exhibits 95, 95A, 95B, 95C, 95D, 95E, 95F, 95G, 95H, 95I, 95J, and 95K,—the nonmineral affidavit offered in evidence not being included in the papers presented for marking.

Mr. GORDON.—Q. Mr. Lambdin, did you have any conversation with Mr. George H. Kester, relative to the entry that you made under the timber and stone act?

WITNESS.—Your Honor, I am under indictment in these cases, and I claim the privilege of not answering any questions that might tend to incriminate myself.

Mr. GORDON.—And I will also state on the record that he is not under indictment for any offense in the Federal Court, and the indictment that he refers to has since the trial at Boise, at which the witness was called to testify on behalf of the Government, and in which he availed himself of his privilege, has been dismissed.

The SPECIAL EXAMINER.—Do you insist upon his answering the question, Mr. Gordon?

Mr. GORDON.—Yes.

WITNESS.—Your Honor, notwithstanding the same, if this indictment has been dismissed, I have no assurance whatever that if my testimony might conflict with the testimony I gave before, in that case I am not sure but what I might be reindicted.

The SPECIAL EXAMINER.—And you still

claim your privilege? [1921—1591]

WITNESS.—I still claim my privilege. I state that I have been away from Boise since the indictment was returned there, and I have been out of the jurisdiction ever since, and as far as I know it is still in force.

Mr. GORDON.—Q. I will ask you, Mr. Lambdin, whether or not at the trial you testified on behalf of the Government at Moscow, in the spring of 1907, the questions which I shall read to you, and the answers which I shall also read, the questions being asked, and the answers made by you. I read from page 632 of the record of the Circuit Court of Appeals, No. 1605, the case of William F. Kettenbach, George H. Kester and William Dwyer vs. the United States, referred to in the stipulation made by and between counsel for the respective parties at the beginning of the taking of the testimony in these said cases:

“Q. Where do you reside, Mr. Lambdin?

“A. Potlatch, Idaho. I am in the employ of the Potlatch Mercantile Company, have been there since the 10th of January, about two years at one time, and one year at another time, I resided at Lewiston, Idaho; I was there in 1902. I am acquainted with the defendant W. F. Kettenbach, and have known him for about five or six years. I don't know as I was ever introduced to him; I have often spoken to him. I have had some business transactions with Mr. Kettenbach through which we became acquainted. I have known George H. Kester since about the

(Testimony of Rowland A. Lambdin.)

spring of 1902. I got acquainted with him in the Lewiston National Bank. I had dealings with him so that we became acquainted. I have known the defendant Dwyer about the same length of time at Lewiston, Idaho."

I will ask you, Mr. Lambdin, if you remember those questions being asked you and those questions answered by you at the trial I have referred to?

A. I still claim my privilege.

Q. And decline to answer? [1922—1592]

A. And decline to answer, yes, sir.

Q. "Q. Did you at any time file upon a timber claim under what is known as the stone and timber law? A. I did."

Do you remember that question being asked you, and that answer made by you?

A. I decline to answer, for the same reason.

Q. I shall read the following questions, and ask you whether you made the replies that I shall also read, at the time that you appeared on behalf of the Government, heretofore referred to:

"Q. Where were you residing at that time?

"A. Lewiston, Idaho.

"Q. State in your own way the circumstances leading up to your filing on this timber claim and then go ahead and relate the incident in your own way.

"A. Yes, sir.

"Q. You recognize this paper? A. Yes, sir.

"Q. Is that the paper you filed in the land office at Lewiston, the time you applied to purchase these timber lands? A. Yes, sir.

(Testimony of Rowland A. Lambdin.)

“Q. Now, you may go ahead and state the circumstances leading up to this, how you came to be attracted to the subject.”

There was an objection there, and then the question was continued:

“Q. (Continued.) Did any person come to you and mention the subject of your taking the timber claim? A. Yes, sir.

“Q. Who was that person?

“A. Samuel C. Hutchings.

“Q. Did he tell you the name of the person from whom he came? A. Yes, sir.

“Q. Who was it? [1923—1593]

“A. George H. Kester.”

Do you remember those questions being asked you, and those answers made by you, at the time referred to? A. I still decline to answer.

Q. “Q. Did he relate to you the conversation he had had with Kester in relation to it, and what had been said to him by Kester?

“A. He told me I could get a claim through Mr. Kester.

“Q. Now, what did you do after Hutchings told you about this?

“A. I went to the bank and saw Mr. Kester.

“Q. All right. Now, go ahead and state what occurred.

“A. I went around and introduced myself to Mr. Kester and told him Mr. Hutchings had sent me around there and I understood he wanted me to take up this timber claim, and I would get \$100.00 for

(Testimony of Rowland A. Lambdin.)

taking it up, he to pay all expenses of the transaction. We came to an agreement, and he told me that Dwyer was going up in a few days and he would notify me when he was going and to meet him at the train and go up with him into the timber.

“Q. You came, you say, to an agreement; what was that agreement?

“A. The agreement was I should go out and take up a stone and timber claim and they would pay all the expenses, and I was to receive \$100.00 when I made my final proof and turned over the deed to them.

“Q. Was anything said about the money to make the final proof on the land?

“A. They were to furnish all the expenses in the transaction.”

Mr. Lambdin, were those questions asked you and those answers made by you, at the time I referred to?

A. I still decline to answer.

Q. I continue to read the testimony of Rowland A. Lambdin, from the record above mentioned, and ask you if this question was asked you:

“Q. Including the money to pay for the land?

“A. Including everything. [1924—1594]

“Q. Well, now, go right ahead and relate it.

“A. Well, I think it was about ten days later I was notified; I don't remember just who notified me. Anyway I was notified to go up with Dwyer the following morning. He would be going up to meet him at the train. I think it left at 7:30 in the morning. I went up to Vollmer, what is now called Troy.

(Testimony of Rowland A. Lambdin.)

There we procured saddle-horses, Mr. Dwyer got two, and from there we got on into the timber, I should think about twenty miles.

“Mr. RUICK.—You speak pretty rapidly for the reporters.

“Mr. TANNAHILL.—Go right ahead, they will get it.

“Q. Talk to the jury, turn to the jury and go ahead in your own way.

“A. We got up there the following day; we stayed overnight at a place, we stayed there one night; I had a kind of an accident, and I had to return to Vollmer and back again, proceeding on the next day, and got there along in the afternoon about three o'clock, between three and four, and put up at a party's house, I don't remember the name. The next morning we went up to the timber. I went over the claim I was to file on, I supposed I did, looked at the corners on the stake. I also went over some other timber at that time, and the next day after that I returned to Vollmer, and Mr. Dwyer stayed up in the timber. He rode back probably about fifteen miles with me, and he left me there, and I came back to Lewiston that afternoon and got there about 3:30, and went up to the land office and was directed to go to Mr. Mullen, in Anderson's office I believe at the time, I forget which one of them made out my papers, and from there I went in and filed on the timber claim.

“Q. Where did you get the money to file or pay the filing fee? A. Kester.

“Q. Did you pay Mullen anything?

(Testimony of Rowland A. Lambdin.)

“A. Yes, sir.

“Q. Or whoever made out the papers?

“A. I paid for filing the papers, and also for recording them; paid Mr. West. [1925—1595]

“Q. How much did you get for that?

“A. I don’t remember how much; just enough to cover it. I gave him the exact amount.

“Q. Now, Mr. Lambdin, before you filed these papers in the land office, did you have any conversation with any person, any of the defendants, relative to the matters in the land office, and the profits which you would be apt to make?

“A. Mr. Dwyer and I had talked the matter over quite a little up in the timber; I didn’t know what was expected of me so I had to make inquiries to find out.

“Q. Was the matter discussed between you and Dwyer at all relative to what you would have to answer in the land office and how you would have to answer in the land office? A. Yes, sir.”

I will ask you, Mr. Lambdin, whether those questions that I have read, and the answers which I have read in reply to them—whether you remember that they were made by you—whether you remember the questions being asked you, and the answers being made by you, when you testified on behalf of the Government at the trial at Moscow in 1907?

A. I still decline to answer.

Q. I continue to read from the record referred to:

“Q. Was the matter discussed between you and Dwyer at all relative to what you would have to an-

(Testimony of Rowland A. Lambdin.)

swer in the land office and how you would have to answer in the land office? A. Yes, sir.

“Q. I will show you the testimony given by you upon your final proof, and will call your attention to the sworn application filed by you on the 25th of April, 1902, and the statements contained therein to the effect: I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly or indirectly made any agreement or contract in any way or manner with any person or persons [1926—1596] whomsoever by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself,” also these questions particularly in your final proof: “Have you sold or transferred your claim to the lands since making your sworn statement, or have you directly or indirectly”—this is the part to which I call your attention particularly—“directly or indirectly made any agreement or contract in any way or manner with any person whomsoever by which the title you may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except yourself?” And “Do you make this entry in good faith for the appropriation of the land exclusively to your own use and benefit, and not for the use or benefit of any other person?” And this other question “Nor has any other person than yourself, or has any firm, corporation or association any interest in the entry you

(Testimony of Rowland A. Lambdin.)

are now making, or in the land or in the timber thereon"; also these other particular questions in your cross-examination, "Did you pay out of your own individual funds all the expenses in connection with making the filing, and do you expect to pay for the land with your own money?" That was question 16 of the cross-examination. Question 17: "Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?" to which you answered: "I borrowed \$100.00 of it on my personal note, and no way involved this land to secure the loan. Most of it has not yet"—etc. Now, I will ask you, Mr. Lambdin, whether or not these subjects embodied in these questions were talked over between you and Dwyer or either of the defendants at any time before you made your filing or your final proof?

"A. Most of them were talked over between Mr. Dwyer and myself.

"Q. Now you have stated about your filing and having papers made out and your filing; now go ahead and state what else occurred in relation to this subject.

"A. You mean in regard to filing or final proof?

"Q. Yes, anything to any feature of it. [1927—1597]

"A. I think it was lacking two or three days of three months when I was notified through the land office of the day I was to prove up would arrive, and in the meantime Mr. Dwyer had sent to have my witnesses down for me. I forget his name, one of the

(Testimony of Rowland A. Lambdin.)

men we stopped with the night we was up in the timber. He lived close there and he came down on the morning train on the day to prove up. I think about ten o'clock in the morning. Before I went to prove up I went into the Directors' room of the bank, and Mr. Kester gave me the money to prove up with, and I went upstairs.

"Q. Did you execute any papers there at the time he gave you the money? A. No, sir.

"Q. Give him any note or other security?

"A. No, sir.

"Q. Did he ask you for any?

"A. Not to my knowledge. I also got \$20.00 to pay the witness with and I went upstairs and made my final proof and paid the money over and got a deed and came down to the bank, and Mr. Kester and Mr. Dwyer, I think, and myself went across to Mr. H. K. Barnett's office, and there was a deed made out and I signed it, and Mr. Barnett and myself got into a hack and went up to the house and my wife signed the deed, and we came back down town.

"Q. You spoke of getting \$20.00 from Mr. Kester to pay a witness with. What witness do you refer to there?

"A. The gentleman that came down to witness my final proof.

"Q. Did you know that this witness was coming and had been secured for the purpose?

"A. Yes, sir.

"Q. Did you have any conversation with either of the defendants about it before he came there, before

(Testimony of Rowland A. Lambdin.)

he got there?

“A. Yes, Mr. Dwyer had told me I would have to have four witnesses [1923—1593] and he gave me the four, had the four names that I got from him, and he seen to this witness coming down so that I had nothing to do with it.

“Q. What conversation, if any, did you have with him relative to the witnesses failing to appear or anything of that sort?

“A. Well, not much if any. The morning that I was to prove up, I went up and saw Mr. West, I didn't know maybe he might not get down, and I went up to see Mr. West, to see if I could get a stay of proceedings for two or three days if the witness did not get down. I found that I could, but the witness got down on the morning train, and I didn't need it.

“Q. I want to know who suggested it?

“A. I forget who suggested it, but it was suggested to me by either Mr. Dwyer or Mr. Kester.

“Q. You say Mr. Kester gave you this \$20.00 to go and pay the witness? A. Yes, sir.

“Q. Did he have any conversation with you at the time he handed you this money?

“A. Before I was handed the money I had to find out what the witness wanted.

“Q. I want you to tell what Mr. Kester said, what, if anything, he said to you about it at the time he gave you this money?

“A. When he gave me the money he told me so much of it would be to pay for the filing and filing

(Testimony of Rowland A. Lambdin.)

proof, and pay for the land, and \$20.00 for the witness, but before I got the \$20.00 I found out what the witness was going to charge and reported it to Mr. Kester.

“Q. Did you discuss the matter with either of the defendants relative to what you would say as to where the money had come from, or anything of that sort?

“A. We had some talk on the matter. but I don't remember just [1929—1599] what was said. I know I was supposed to have the money myself, or that it would come up anyway where I got the money from.

“Q. Do you remember with whom you had this talk?

“A. I had almost all my talk on that part of it with Mr. Dwyer.

“Q. When you came down from the land office with them, you stated you got your final receipt. Did you get a final receipt when you made your final proof?

“A. I got a receipt; yes, sir.

“Q. From the land office? A. Yes, sir.

“Q. Where did you take it to?

“A. Took it right into the bank and gave it to Mr. Kester.

“Q. What, if anything, did Kester say to you when you came down into the bank?

“A. I think he just asked me if I got any receipt, and I told him yes, and turned it over to him, and he asked me to come over to Mr. Barnett's office and went with me there, and there got a deed and took

(Testimony of Rowland A. Lambdin.)

it along, or else Mr. Barnett had it already. Anyway it was all ready for me to sign.

“Q. This was the same day you made your final proof? A. Yes, sir.

“Q. Who did this deed run to?

“A. I didn’t know at the time who it did run to; I never looked at it.

“Q. Did you ever learn later who it run to?

“A. Yes, sir.

“Q. Who to?

“A. W. F. Kettenbach and George H. Kester.

“Q. Have you ever paid any location fee at all?

“A. No, sir.

“Q. Never agreed to pay any attorney fee?

“A. No, sir.

“Q. Were you ever asked to pay any? [1930—1600] A. No, sir.

“Q. Any talk about a location fee?

“A. None whatever that I remember of.

“Q. When, if at all, did you get this \$100.00?

“A. Between the time of filing on the claim and proving up on it.

“Q. How did you get it?

“A. Went to the bank and got it in dribbles of \$10.00 or \$15.00, one time \$35.00.

“Q. From whom? A. From Kester.

“Q. State the circumstances of those different payments, Mr. Lambdin?

“A. Well, I think one time I got \$10.00 or \$25.00. No, it was \$20.00, I gave my note I guess, and then a man by the name of Schroeder, I think, signed a note,—

(Testimony of Rowland A. Lambdin.)

“Q. Was there an understanding in regard to that note, at the time it was executed as to its payment?

“A. Why, Mr. Schroeder was given to understand he would never be called upon to pay it.

“Q. By whom? A. By myself and Mr. Kester.

“Q. What were the reasons given there at the time?

“A. Why, I think it was just simply that the note would be taken care of and was simply a matter of form, that somebody else would have to be on the note with me.

“Q. Well, now, what other payments did you receive that you recall?

“A. I drew a check once I think for \$35.00 and it was cashed.

“Q. Did you have any money at the bank at the time? A. No, sir.

“Q. Was the check paid or honored?

“A. Yes, sir. [1931—1601]

“Q. Well, how much of this money had been paid at the time you made final proof?

“A. I think the whole thing was paid at the time I made final proof.

“Q. You think there was nothing coming to you at the time?

“A. I don't remember of anything coming to me when I proved up.

“Q. Was there anything paid to you at that time when you executed the deed?

“A. No, sir, I don't think so.

“Q. How much then did you ever receive?

(Testimony of Rowland A. Lambdin.)

“A. Received \$100.00.”

Do you remember those questions being asked you at the trial at Moscow, to which I have heretofore referred, and do you remember those answers which I have read being made by you?

A. I still refuse to answer.

Q. Continuing to read from the same record, I will ask you whether these questions were asked you, and whether the answers which I shall read were made by you:

“Q. Mr. Lambdin, at the time you first went down to the bank to see Mr. Kester about filing on the timber claim, what did Kester say to you about the proposition of filing on a timber claim?

“A. I was given to understand by Mr. Kester if I went up and took a timber claim that the expenses would be all paid, and I would receive \$100.00 when I made final proof.

“Q. What, if anything, was said about—was anything further said about the scarcity or plentitude of timber claims at that time, if anything of that sort?

“A. Well, I was given to understand that timber was being taken up.

“Q. Not what you were given to understand, but what Kester told you?

“A. He said the timber was being taken up very rapidly and would [1932—1602] soon be all gone and if I did not take up a claim now, I would not be able to get one if I waited.”

Do you remember those questions being asked you, and those answers made by you, at the trial at Mos-

(Testimony of Rowland A. Lambdin.)

cow that I have referred to?

A. I still refuse to answer.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Lambdin, I will ask you if on the occasion referred to by Mr. Gordon, the following questions were asked you by myself, on cross-examination, and if you made the answers which I shall read, and I will read from the same record that Mr. Gordon read from, commencing on page 646 of that record:

“Q. You say you were given to understand if you went up and took a timber claim that the money would be furnished you to make final proof and save expenses? A. Yes, sir.

“Q. That was your understanding?

“A. That was my understanding.

“Q. And that if you did go up and take the claim and make final proof you would be able to make \$100.00 out of it? A. Yes, sir.

“Q. That was your understanding of it?

“A. Yes, sir.

“Q. And you did go up and take a timber claim?

“A. I did.

“Q. And you went up because they were getting scarce, and you thought you would not have very many opportunities to use your timber right?

“A. No, sir, not so much that as I wanted the \$100.00; I needed it.

“Q. You needed the \$100.00?

“A. Yes, sir. [1933—1603]

“Q. And you felt you would be able to make \$100.00 if you took up a timber claim?

(Testimony of Rowland A. Lambdin.)

“A. I had Mr. Kester’s word for it and I took that.

“Q. Where did you say you had been working last here recently?

“A. Potlatch Mercantile Company.

“Q. How long have you been working there?

“A. Since the 10th of January of this year.

“Q. Where was you before that?

“A. In Spokane.

“Q. How long have you been there?

“A. A year ago last November I went there.

“Q. Where were you in April, 1905?

“A. I believe I was in Lewiston.

“Q. Were you in Spokane in April, 1905?

“A. Well, I was in Lewiston just a year before I went to Spokane; I was in Spokane a year.

“Q. What were you doing in Spokane?

“A. I was in both Spokane and Lewiston, but not in April; I think I was in Lewiston in April. I think I left in 1905, in the fall.

“Q. You think you left Spokane?

“A. No, Lewiston. I think I left there and went to Spokane in the fall of 1905.

“Q. Were you in Spokane any of the time during the time you were in Lewiston? Did you go back and forth to Spokane? A. I don’t think I did.

“Q. Now, were you at Lewiston all the time?

“A. The last time I was there for about a year; I think it was a year.

“Q. When did you first come to Lewiston?

“A. I think I came there in the fall of 1900.

“Q. And how long were you there at that time?

(Testimony of Rowland A. Lambdin.)

[1934—1604] A. About two years.

“Q. About two years? You left then in the fall of 1902? A. About that, yes, sir.

“Q. Then where did you go?

“A. I went to Spokane and from Spokane to Seattle.

“Q. When did you go to Spokane?

“A. I went to Spokane, I believe, in the fall of 1902.

“Q. When did you leave Spokane to go to Seattle?

“A. I was in Spokane a few days, about ten days or two weeks probably.

“Q. Then, where did you go?

“A. I went right to Seattle.

“Q. Where did you go when you left Seattle? How long did you stay in Seattle?

“A. I stayed in Seattle about a year and a half, along in July, I think, or the first of August.

“Q. Then, where did you go?

“A. Then, I came down, came down to Spokane and stayed there until about the 20th of November.

“Q. Of the same year, 1904?

“A. Of the same year.

“Q. Then, where did you go?

“A. Came to Lewiston and stayed one year.

“Q. That would be until the 20th of November, 1905? A. That would be the fall of 1905.

“Q. I will ask you, Mr. Lambdin, if you recognize that handwriting? (Showing witness paper.)

“A. That is my writing.

“Q. That is your writing? A. Yes, sir.

(Testimony of Rowland A. Lambdin.)

“Q. You addressed that envelope, did you?

“A. I believe I did. [1935—1605]

“Q. I will ask you to look at this letter (showing witness paper) and state whether or not that is in your handwriting.

“A. That is my handwriting.

“Q. You mailed that to George H. Kester?

“A. I did, sir.

“Mr. TANNAHILL.—We ask that these be identified and each marked for identification.

“(Envelope marked Defendants’ Exhibit ‘G’ for Identification. Letter marked Exhibit ‘H’ for Identification.)

“Q. Look at this letter I now hand you and state whether or not that is your signature to the letter.

“A. That is my signature, yes, sir.

“Q. You mailed that to Mr. Kettenbach, did you not?

“A. Mr. Kester, I think, I don’t remember—no, Mr. Kettenbach.

“Mr. TANNAHILL.—We ask that this be marked Defendants’ Exhibit ‘I’ for Identification.

“(Letter so marked.)

“Q. I will ask you, Mr. Lambdin, to look at this copy of a complaint and state whether or not that is the paper that you refer to in this letter, marked Defendants’ Exhibit ‘I’ for Identification.

“A. Yes, sir, that is the same one.

“Mr. TANNAHILL.—We ask that this copy of a complaint be marked Defendants’ Exhibit ‘J’ for Identification.

“(The same is so marked.)

(Testimony of Rowland A. Lambdin.)

“Q. Mr. Lambdin, you wrote Mr. Kettenbach a letter a few days before you sent this one in which you enclosed a copy of the complaint, did you not?

“A. You mean a letter previous to this one you have now?

“Q. The one with which you enclosed the copy of the complaint?

“A. You mean a letter previous to this one you have now?

“Q. Yes, you wrote a letter previous to this one, did you not?

“A. Not that I remember of. [1936—1606]

“Mr. TANNAHILL.—I offer these documents in evidence, being the envelope and letter referred to as Defendants’ Exhibit ‘G’ and ‘H,’ already identified; the envelope bears the postmark, Spokane, Washington, April 5th, 6:30 P. M., 1905, and is addressed to George H. Kester, Lewiston, Idaho.

“And the same was thereupon marked respectively Defendants’ Exhibit ‘G’ and ‘H,’ copies of which appear elsewhere in this transcript.

“Mr. TANNAHILL.—We also offer in evidence Defendants’ Exhibit ‘I’ and ‘J’ for Identification, which said documents were received in evidence and marked Defendants’ Exhibits ‘I’ and ‘J,’ respectively, copies of which appear elsewhere in this transcript.

“Q. Mr. Lambdin, you stated that you returned to Troy after you and Mr. Dwyer left Troy, or Vollmer as you call it? A. Yes, sir; I returned to Troy.

“Q. What did you return for?

(Testimony of Rowland A. Lambdin.)

“A. To take the train to Lewiston.

“Q. Did you have any other mission?

“A. Did I have any other mission?

“Q. Yes; after you went away from Troy you went back for something, did you not?

“A. Because I lost my pocketbook.

“Q. Did you have any money in it?

“A. Yes, sir.

“Q. How much money did you have?

“A. \$100.00.

“Q. Did you not have \$200.00 in it?

“A. I don't know. I had enough money in it so that I was anxious to get back and find it; I don't think that I had more than a hundred.

“Q. Did you not tell Mr. Dwyer on this trip, yourself and Mr. Dwyer being present, that you had money to pay him his location fee, or words in substance and to that effect? [1937—1607]

“A. No, sir.

“Q. You didn't tell him that? You never had any conversation with Mr. Dwyer regarding the location fee? A. Not that I remember of.

“Q. Now, Mr. Lambdin, you state in this letter that you wrote Mr. Kester a letter and received no reply from him. What letter did you refer to?

“A. That is the letter I wrote from Spokane, is it?

“Q. Yes. (Reading:) ‘I wrote you a letter Saturday evening telling you of conditions and that I needed \$75 by Friday. I received a letter from my brother to-night, stating that he had not seen you.’ You wrote that sort of a letter?

(Testimony of Rowland A. Lambdin.)

“A. Yes, sir, I did, prior to that one.”

Do you remember whether those questions were asked you, and whether you made those answers, Mr. Lambdin? A. I decline to answer.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Lambdin, at the time that I have before referred to, do you remember whether or not the following questions were asked you, and whether or not you made the following answers, on redirect examination by Mr. Ruick, and I will read from the record that I read from before, commencing on page 652:

“Q. What money was this that was in your purse which you lost on that trip?

“A. Money given me by Mr. Schroeder for another mission.

“Q. Was the money yours, any part of it?

“A. No part of it was mine only for use on this certain mission.

“Q. What was your financial condition at that time? A. I was broke and out of work.

“Q. Who is Mr. Schroeder?

“A. He is the gentleman I had been working for but his laundry [1938—1608] burned and threwed me out of work.

“Q. What threw you out of work?

“A. The burning of his laundry.”

Were those questions asked you, and did you make those answers, at the time and upon the occasion that I have referred to?

A. I decline to answer.

(Testimony of Rowland A. Lambdin.)

Recross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Lambdin, I will ask you whether or not the following questions were asked you, and if you made the following answers, upon the occasion which we have before referred to, and I read from page 652 of the volume which I have before read from:

“Q. You have been indicted, have you not?

“A. Have I been indicted?

“Q. Yes? A. Not that I know of.

“Q. You don’t know whether you have been indicted or not?

“A. I had never heard of it, except it was in the paper, the ‘Lewiston Tribune,’ that, of course, is just Lewiston newspaper talk.

“Q. You have never been arrested?

“A. Have I ever been arrested?

“The COURT.—That is, upon the indictment here?

“A. No, sir.

“Q. With whom did you talk about your evidence, Mr. Lambdin? Who was the first Government official you talked with regarding any transactions with Mr. Kester?

“A. I talked with two parties at once.

“Q. Who?

“A. Mr. Goodwin and Mr. O’Fallon.

“Q. Where did you talk with them?

“A. In my house and at the Bollinger Hotel.

“Q. Do you remember about when that was?

[1939—1609]

(Testimony of Rowland A. Lambdin.)

"A. No, it was prior to the grand jury at Boise; I think it was in the spring or early summer of 1905.

"Q. Did you give them a statement at the time?

"A. I did.

"Q. And have you seen that statement since?

"A. I have.

"Q. When did you see it?

"A. I saw it last night.

"Q. You read it over last night, did you?

"A. Yes, sir; I read it over.

"Q. And when did you see it prior to last night and since you gave it to the officers?

"A. I could not answer that question positively; I might have seen it down at Boise, but I don't remember seeing it.

"Q. You appeared before the grand jury at Boise? A. I did.

"Q. And had a talk with Mr. Ruick, Mr. Goodwin and Mr. O'Fallon?

"A. I believe we had some conversation, but what it amounted to I don't remember.

"Q. And then, you went over your statement last night?

"A. I read my statement over last night."

Were those questions asked you, and did you make those answers, at the time and place I have referred to? A. I decline to answer.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Lambdin, I will ask you whether or not you were asked the following questions, and whether you

(Testimony of Rowland A. Lambdin.)

made the answers which I shall read to you, at the trial to which I have heretofore called your attention, on redirect examination by Mr. Ruick. I read from page 654 of the record which I read from before:

“Q. When you testified in Boise, and when you were before the [1940—1960] grand jury in Boise, do you remember what month that was?

“A. I think it was in June; I know it was in the summer, anyway.

“Q. Wasn't it in July?

“A. It possibly was, it was along in the warm weather, I know, June or July.

“Q. Was it before or after you had made this written statement to Mr. Goodwin and Mr. O'Fallon?

“A. It was after.

“Q. When had you made that statement to Mr. Goodwin and Mr. O'Fallon?

“A. Sometime in May, I believe.

“Q. Of what year? A. 1905, I think.

“Q. Well, was it before you went down to Boise?

“A. It was before I went to Boise; yes, sir.

“Q. Is that your signature to that document?

“A. Yes, sir.

“Q. Is that the affidavit that you made the sworn statement that you made in the presence of Mr. Goodwin and Mr. O'Fallon in relation to the facts of this particular case? A. Yes, it is.

“Q. Was it made on the day on which it bears date as you recollect it? A. About the time of it.

“Q. Mr. Lambdin, this skeleton complaint, this unsigned complaint, which you sent to Mr. Kester—

(Testimony of Rowland A. Lambdin.)

that you sent to Mr. Kettenbach, accompanied by the letter addressed to him, when was that time relative to the time that you made this statement to Mr. Goodwin and Mr. O'Fallon, do you remember?

“A. Why, about a week I should judge prior to my statement to Mr. Goodwin and Mr. O'Fallon.”

Do you remember those questions being asked you, and those answers [1941—1611] being made by you? A. I decline to answer.

Q. Now, I will ask you if you remember the following questions being asked you in the case to which I have referred, upon your being recalled as a witness in behalf of the Government, and whether or not you made the answers which I shall read to you, and I will read from the same record that I have read before, commencing on page 656:

“Q. Now, Mr. Lambdin; you may explain this transaction in these letters and this blank complaint to which your attention has been called.

“A. In the first place, my wife was taken very seriously ill and had to be taken up to Spokane to be operated upon and we didn't know whether she would live or whether she would die. I went to Dr. Phillips and to the First National Bank, and saw Mr. Kester and Mr. Kettenbach, and told them what I wanted the money for, and that I had to have it as she had to be taken very soon, and explained the situation and had the doctor there with me, so he would know and I wanted to borrow the money so I could take her up and they flatly refused me; so later I went to Mr. Frank Kettenbach of the Idaho

(Testimony of Rowland A. Lambdin.)

Trust Company, so he gave me his personal check for \$300.00 after I stated the case to him.

“Q. W. F. Kettenbach? Did W. F. Kettenbach, the defendant, later refer to the transaction between you and Frank Kettenbach? A. He did.

“Q. Go ahead and state the conversation between you and Frank Kettenbach.

“A. I told Frank Kettenbach the circumstances, the reason I wanted the money, and he told me to come back at 7 o'clock that evening.

“Q. Relate the entire conversation you had with him. We want it all.

“A. I told Mr. Frank Kettenbach my wife was very seriously ill; that I had been up to the other bank and had seen Mr. W. F. Kettenbach about it, and Mr. Kester and tried to make a loan, and they had refused [1942—1612] it, and that she had to go to the hospital and be operated on and she would have to go at once, for the reason that the surgeon who waited on her was going east, and she had to be leaving that night to be operated on next day. Mr. Kettenbach said—

“Q. State what you told him. State the conversation in full.

“The COURT.—State what you said.

“A. I came out at the time flatfooted and told Frank Kettenbach that if I didn't get the money, Kester and Kettenbach would have cause to regret it.

“Q. Now, go ahead and state the facts, the conversation.

(Testimony of Rowland A. Lambdin.)

“A. And Mr. Kettenbach said he would take the matter up with Mr. W. F. Kettenbach, his brother, or anyway a relation, and have me to call at the bank at seven o’clock that evening. He also told me, he asked me who I would get to sign the note with me, and I said my brothers. He also wanted my brother’s wife on the note, and I objected to bringing her in the deal and he said it wasn’t necessary. I got a party by the name of Ralph Chapman in place of her, in place of my brother’s wife; I got the note signed up and met him at 7 o’clock, or near 7:30 that evening, and he gave me his personal check for \$300.00, and took the note as security.

“Q. What talk did you have with either of the defendants concerning that note later?

“A. Later I went to Spokane anyway, and of course \$300.00 was very little over the operating expenses; in fact, the operating expenses were \$275.00, and I had to have a trained nurse and other incidental expenses and I wrote Mr. Kettenbach this letter.

“Q. Mr. Kettenbach or Mr. Kester?

“A. Mr. Kester. I stated the reasons and told him—told him to see my brother and he would sign a note for \$75.00, and when I returned, which would be on the Sunday following, Sunday I would sign the note, and for him to send me the money at once.

“Q. Pardon me, Mr. Lambdin; I was misled by your statement. You are now referring to the letter that is not here? [1943—1613]

“A. I am referring to another letter not here.

(Testimony of Rowland A. Lambdin.)

The first letter they asked me about.

“Q. That was written to him?

“A. The 17th of August, the same as the second one that was wrote to Mr. Kester.

“The COURT.—The letter introduced in evidence was written to Mr. Kester.

“Mr. RUICK.—Yes, go ahead.

“A. Mr. Kester didn't answer and I telephoned to my brother. My brother said he hadn't seen him, so I wrote this next letter, stating, as has been read before the Court, that I must have this money. He already knew from the previous letter just the situation I was in. I was up there broke, with my wife in the hospital and nothing to do, and I must have the money or stay there.

“Q. Did you see either one of the defendants later concerning this \$300.00 note at the Idaho Trust Company?

“A. Afterwards I was in Mr. Gaut's barber-shop in Lewiston, and Mr. Kettenbach came in and he took a chair in the rear and I went over and sat down beside him, and brought up or mentioned the \$300.00 note, but he gave me to understand it was through his doings that I received the money from Frank Kettenbach, and also that he expected that it would be taken care of.

“Q. What did he say? You say ‘the understanding,’ we want the statements as near as you can give them.

“A. I know money matters were brought up. I don't know exactly the circumstances, but anyway

(Testimony of Rowland A. Lambdin.)

I believe I asked him for another loan, \$25.00 I believe it was, and he told me that he had already secured me this \$300.00 and that he had done all he needed to, and also in the conversation I understood that he intended to take care of it. Later we had another conversation after I was notified by F. W. Kettenbach the note was due and ought to be paid at once, or he would serve notice on [1944—1614] the other signers, or something to that effect, and I went to him again about it and he denied saying anything about it, and plainly told me to attend to my own business and he would attend to his, or to that effect, that he didn't care anything about me, or how I came out.

“Q. In regard to this skeleton complaint, Mr. Lambdin?

“A. The skeleton complaint I got up and sent to Mr. Kettenbach, simply as a matter of form, to see whether he would send this money or not. I found out in the meantime I had only got \$100.00 whereas the warranty deed called for \$800.00 for the claim, and that left a difference of \$700.00 for the deed or claim, which I have never received; I got up a skeleton complaint and sent it to Mr. Kettenbach to see what he would do about it. He never said anything more to me, and I never said anything to him. It ended right there excepting I saw him, I believe, the next day and found out that he didn't intend to do anything. I dropped the matter and he had—

“Q. What did you say to him?

“A. I could not recall our conversation. it was

(Testimony of Rowland A. Lambdin.)

simply—he mentioned something about he had me for blackmail, and he didn't need to bother any more about me. He told me, I think, I. N. Smith had it in his hands.

“Q. State what he said.

“A. He told me the paper I sent him was in his attorney's hands, I. N. Smith's hands, and he guessed he had me where they wanted me or something to that effect. I never signed it or recorded it, or anything of that kind, and I didn't think they did—and I dropped the matter and that has been the end of it.

“Q. You had the notes to pay and you paid them?

“A. I had the notes to pay; I don't know whether they are all paid or not. I have not been notified of any back payments due on them anyway.

“Q. Did you have any transactions with either of these defendants after the grand jury met down there in Boise in relation to this subject, [1945—1615] to these matters at all?

“A. I don't believe I did.”

Do you remember those questions being asked you, and those answers being made by you?

A. I decline to answer.

Q. I show you what purports to be an affidavit signed by R. A. Lambdin, dated May 27th, 1905, and sworn to on that date before Francis M. Goodwin, Special Agent of the General Land Office, attested by S. F. O'Fallon, and ask you, Mr. Lambdin, if you signed that paper? A. I refuse to answer.

Mr. GORDON.—I will ask to have that question

(Testimony of Rowland A. Lambdin.)

certified also, and I will ask to have that affidavit marked for identification.

Said affidavit was thereupon marked by the Reporter as Exhibit 96 for Identification.

Mr. GORDON.—Q. Mr. Lambdin, I will ask you if you remember the following questions which I shall read being asked you, and the answers which I shall also read being made by you in response to those questions, when you appeared as a witness on behalf of the Government at the trial of the cases of the United States vs. Kester, Kettenbach and Dwyer, at Boise, in February last:

“Q. What is your full name, Mr. Lambdin?

“A. Rowland A. Lambdin.

“Q. Where do you reside? A. Butte, Montana.

“Q. How long have you resided in Butte, Montana? A. About three years.

“Q. Where did you reside prior to that time?

“A. Spokane, Washington, for a short time.

“Q. When did you reside in Spokane, in what year? A. 1907, the spring of 1907, I think.

“Q. Until 1907? [1946—1616]

“A. I was just there a short time, for about three weeks.

“Q. Did you ever live in Lewiston?

“A. I did; I lived there about three and a half years once at one time and a year another time.

“Q. When was this that you lived in Lewiston?

“A. I think I came to Lewiston ten years ago this fall.

“Q. And remained there until 1907?

(Testimony of Rowland A. Lambdin.)

“A. No, I remained there three and a half years, and then went to Seattle, and then came back to Lewiston and stayed there a year after that.

“Q. Tell me the years you stayed at Lewiston.

“A. I think I came to Lewiston in the fall of about '99, and I was there for three years and a half.

“Q. From '99 until 1903, some time?

“A. Something like that.

“Q. And then you went away and returned again?

“A. I did.

“Q. How long were you away?

“A. I was away about two years and a half, maybe three.

“Q. Do you know the defendant William Dwyer?

“A. I do.

“Q. Do you know Mr. Kester? A. I do.

“Q. And Mr. Kettenbach? A. Yes, sir.

“Q. How long have you known each of them?

“A. Well, pretty nearly—

“Q. Approximately? A. About nine years.

“Q. What was your occupation in 1902 and 1903?

“A. I think I was marker and assorter for a laundry in Lewiston at that time. [1947—1917]

“Q. Were you ever employed by the Potlatch Lumber Company? A. I was.

“Q. When was that?

“A. I was employed by them at the time the case came up at Moscow; I don't remember the year.

“Q. Did you ever talk with any of the defendants, or all of them, relative to taking up a timber claim?

“A. I would like to be relieved of answering ques-

(Testimony of Rowland A. Lambdin.)

tions about any matter that might tend to incriminate me,—I believe I am under indictment.

“The COURT.—Is that true, Mr. Gordon?

“Mr. GORDON.—I don’t know but what it is, if your Honor please. I have heard that the gentleman is indicted; I don’t know it, but I assume that he is.

“The COURT.—Apparently he would have the right to claim the privilege if that is the case. I suppose this relates directly to a matter involved in the indictment, if he was indicted?

“Mr. GORDON.—Yes, sir.

“The COURT.—Do you desire time to make examination of the record, or do you assume that the witness’s statement is correct?

“Mr. GORDON.—I assume that his statement is correct, if your Honor please, with reference to the indictment, but I didn’t understand that that would preclude him from answering all questions, without some inquiry as to whether your Honor would consider whether the question would tend to incriminate him.

“The COURT.—Not necessarily all questions, but this particular question relates to his entry, as I understand it.

“Mr. GORDON.—Yes, sir.

“The COURT.—If the indictment is based upon the general proposition that his entry was invalid, that is, that he violated the law or committed perjury in connection with it, apparently any question relating to his acts in making the entry would come within the rule. [1948—1618]

(Testimony of Rowland A. Lambdin.)

“Mr. TANNAHILL.—The indictment was introduced in evidence before and was based on a charge of perjury in connection with making this particular entry.

“The COURT.—If you desire to ask him certain questions I will consider them.

“Mr. GORDON.—Q. I will ask you, Mr. Lambdin, if you ever talked with Mr. Kester or Mr. Kester ever talked with you about taking up a claim under the timber and stone act?

“The COURT.—Now, do you seek to elicit information here as to the entry which he did make?

“Mr. GORDON.—Yes, sir.

“The COURT.—The witness will be relieved from answering the question.

“Mr. GORDON.—If your Honor please, I understand that if the question that was asked could in any way tend to incriminate him, why, of course, he would be relieved from answering it, but in what way could the question or answering the question that he had talked with Mr. Kester about taking up a timber claim in any way tend to incriminate him?

“The COURT.—As you know, Mr. Gordon, the Supreme Court has laid down a very broad rule, that is, has construed the constitutional prohibition as protecting a witness against giving information which directly incriminates him, and also from being compelled to give information which would lead to other information which might incriminate him. You have suggested that this question relates to his conduct and transactions having to do with his entry

(Testimony of Rowland A. Lambdin.)

of this tract of land. If that is the case, the Court must assume that you ask the question for the purpose of showing, or because you think the answer will tend to show, that the entry was illegal. If the entry was illegal, that implies that this witness committed perjury, it would imply that there were some elements of perjury, and therefore I asked you the question, how [1949—1619] can this question which you now put to the witness be material to your case here unless it also be material to the charge or the offense with which he stands charged?

“Mr. GORDON.—The point that I make is this, if your Honor please, the question that I asked him was directed not alone to what might be involved in his entry—

“The COURT.—Well, if you say that to the Court—but I understood you—

“Mr. GORDON.—I didn't mean to mislead the Court, if your Honor please. Here is the situation: The witness is mentioned as one of the entrymen—

“The COURT.—I will ask the direct question: Does the information which you seek to elicit by this question relate to his entry, not does it relate exclusively to his entry, but does it relate to his entry at all?

“Mr. GORDON.—I don't know that it would relate to any entry; I wanted to ask him about a proposition that Mr. Kester or some other defendant made to him.

“The COURT.—The question is, Mr. Gordon, whether or not, when it came to the trial of this man

(Testimony of Rowland A. Lambdin.)

of the charge of perjury, this same question could not properly be asked of him?

“Mr. GORDON.—Yes, sir.

“The COURT.—Then, he is entitled to the privilege.

“Mr. GORDON.—That is all.

“Mr. TANNAHILL.—That is all.

“Mr. GORDON.—If your Honor please, in view of the fact that this witness, who has just been on the stand, has availed himself of the privilege, we have exhausted the witnesses that we have summoned for this morning and had expected to put upon the stand, and I will ask that an adjournment be taken now until after the noonday recess.

“The COURT.—Very well. Adjourn until two o'clock.

“At this time an adjournment was taken until 2 o'clock.” [1950—1620]

And I shall ask you whether those proceedings were had and whether those questions which I have read were asked you on the occasion referred to, and whether you made the answers that I have also read?

(No answer.)

Q. You decline to answer that question on the same ground? A. Yes, sir.

Mr. GORDON.—Well, that's all for the time being.

The SPECIAL EXAMINER.—Have you anything further, Mr. Tannahill?

Mr. TANNAHILL.—No.

At this time a recess was taken until two o'clock P. M. [1951—1621]

At two o'clock P. M. the hearing was resumed.

[**Testimony of J. G. Fralick, for Complainant.**]

J. G. FRALICK, a witness called by the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mr. J. G. Fralick, are you?

A. Yes, sir.

Q. What is your business, Mr. Fralick?

A. I am in the banking business now.

Q. And where is your home?

A. St. Maries, Idaho.

Q. Where did you reside February 14th, 1906?

A. Spokane.

Q. And what was your business at that time?

A. The timber business.

Q. With whom were you associated?

A. The Shevlin-Clark Timber Company.

Q. Did you know Mr. M. J. Dowd at that time?

A. Yes, sir.

Q. Was he connected with you in any way?

A. He was in the employ of the same company.

Q. And do you remember of giving him a letter of introduction to Mr. William Dwyer, one of the defendants, at or about the 6th of February, 1906?

A. Well, I don't remember about that. I know I sent him down to Lewiston. I don't remember about the letter.

Q. And do you remember whether or not at that time you received [1952—1622] a letter, marked

(Testimony of J. G. Fralick.)

Plaintiff's Exhibit No. 79, which I hand you?

A. I did.

Q. And do you remember whether or not about the same time, or at the same time, you received a number of plats, which I hand you, marked Plaintiff's Exhibit 80? A. I did.

Q. And this letter that I have shown you refers to the matters contained in these plats, does it not?

A. Yes, sir.

Q. Did you ever have any talk with Mr. William Dwyer, one of the defendants, relative to the property marked off on these plats which you have identified?

A. Well, I had talks with him referring to lands in the Clearwater country in general.

Q. Did you ever have any talk with him relative to the property that was represented by the marks on these plats?

A. Yes; I had a general conversation with him.

Q. And did he speak of these lands in any way that would indicate the ownership of them?

A. Well, not that I remember of now. I don't remember that he referred particularly to these lands, except lands in the Clearwater country and the North Fork of Clearwater. He referred to Kester and Kettenbach lands, along with other lands.

Q. Well, were those conversations relative to the lands mentioned in the letter which you have identified? A. Not specifically, no.

Q. Well, were you negotiating with him relative to any lands?

(Testimony of J. G. Fralick.)

A. Yes; he offered us lands at various times. I never had any specific talk that I recollect of now, relative to these particular lands; that is, entirely on the—what we call the Kester and Kettenbach lands.

Q. Had Mr. Dwyer been to see you relative to what was known as [1953—1623] the Kester-Kettenbach lands before you sent Mr. Dowd down to see him? A. No, sir.

Q. And while you had this letter which you have identified, and these plats that you have identified, in your possession, did you talk with him relative to the option that this letter might be? A. No, sir.

Q. Did Mr. Dwyer indicate to you that he had any interest in any of the Kester-Kettenbach lands?

Mr. TANNAHILL.—We object to that as leading and suggestive, and calling for a conclusion and not a statement of fact.

Mr. GORDON.—Q. Did he ever, in speaking of the Kester-Kettenbach lands, refer to “our” lands?

A. No, sir, not that I remember of.

Q. Did you ever talk with Mr. Kester about the lands mentioned in this letter which you have identified and these plats? A. Yes, sir.

Q. And did he refer to these lands in any way that would indicate ownership? A. He did.

Q. What did he say, as well as you can remember?

A. Well, I had a conversation with Mr. Kester in Mr. Flewelling’s presence, in which he referred to the option, and in which we had a general conversation about the lands; and he stated that the lands

(Testimony of J. G. Fralick.)

were worth the money, and he had made a mistake by not looking—

Q. Well, but was there anything that he said that would indicate a claim of ownership?

A. Why, yes; he referred to them as “our lands”; not—

Q. Now,— Excuse me, if you want to finish your answer.

A. Now, I must qualify that. I understood (and I guess everyone that had anything to do with it understood) that all those lands on those plats did not belong to Kester and Kettenbach; or, I mean the [1954—1624] lands that are marked on there as Kester and Kettenbach lands.

Q. Now, there is a key attached to these plats, is there not, Mr. Fralick? A. Yes, sir.

Q. And was it explained to you, or were you given to understand from that key which lands were Kester and Kettenbach’s, and which belonged to individuals? A. Yes, sir.

Q. Now, will you explain from that key what you were given to understand as to those who were interested in them; which lands represented individuals, and which marks represented the lands owned by Kester and Kettenbach?

A. Well, I understand that the lands marked with a cross on these plats were Kester and Kettenbach lands; the lands marked with a circle were what we called individual claims, by the claim holders—the claim owners—the original entrymen.

Q. And were you given to understand, either by

(Testimony of J. G. Fralick.)

Mr. Dwyer or Mr. Kester, that they controlled the sale of all the property that is marked there?

A. I don't recollect that either one of those gentlemen told me that they absolutely controlled those lands, although I assumed that inasmuch as they were willing to give an option on all of them that they controlled them to a certain extent.

Q. You never did anything under this option relative to purchasing any of these lands, did you?

A. No, sir.

Cross-examination.

(By Mr. TANNAHILL.)

Q. I will ask you, Mr. Fralick, if it is not a fact that the lands marked with a circle were marked with a circle for the purpose of showing the lands that Kester and Kettenbach did not own or control, but for the purpose of showing lands in the immediate vicinity of these [1955—1625] lands which they did own and control, which could be purchased?

A. I didn't understand it that way.

Q. But you did understand that they didn't own the lands which were marked with a circle?

A. Yes, sir.

Q. And Mr. Dowd was the one that brought this plat to you, was he not?

A. Well, Mr. Tannahill, I don't recollect now whether he handed it to me or whether he mailed it to me; but it came through Mr. Dowd.

Q. It came through Mr. Dowd? A. Yes, sir.

Q. And there is nothing that you can remember that was said between you and Mr. Dowd and Mr.

(Testimony of J. G. Fralick.)

Kester or Mr. Dwyer, which would give you the impression even that they owned these lands marked with a circle? A. No, sir.

Q. And there was nothing said about them absolutely owning all of these lands which was marked with a cross, was there? A. No, sir.

Q. But you understood that the lands that were marked with a cross they either owned or controlled in some way? A. Yes.

Q. And they never pretended to give you an option on the land which was marked with a circle, did they?

A. Well, I don't recollect, Mr. Tannahill, but that letter there will show.

Q. There is nothing except the lands that is mentioned in this letter, is there? There was no representations made to you except what was made by this letter? A. No.

Mr. GORDON.—May I interpolate a question there?

Mr. TANNAHILL.—Yes.

Mr. GORDON.— [1956—1626] Q. In conjunction with these plats, this letter and these plats were considered to be read together, were they not, Mr. Fralick? A. Yes, sir.

Mr. GORDON.—Excuse me, Mr. Tannahill.

Mr. TANNAHILL.—Certainly.

Q. You have done considerable purchasing of lands? A. I beg pardon?

Q. You have done considerable purchasing of lands, have you not? A. Yes, sir.

(Testimony of J. G. Fralick.)

Q. Isn't it a fact that people frequently offer lands for sale that they don't really own, but lands that they control, or know that they can purchase at a certain price? A. Yes, sir.

Mr. TANNAHILL.—That's all.

Mr. GORDON.—That's all, Mr. Fralick. Thank you very much. [1957—1627]

**[Testimony of Clarence W. Robnett, for
Complainant.]**

CLARENCE W. ROBNETT, a witness called on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. State your full name, Mr. Robnett.

A. Clarence W. Robnett.

Q. How old are you, Mr. Robnett?

A. Thirty-eight.

Q. Where were you born?

A. Waitsburg, Washington.

Q. Where did you go to school? A. Dayton.

Q. Dayton, where?

A. Washington. Corvallis, Oregon.

Q. Where else?

A. Lewiston, Idaho. Pomeroy, Washington.

Q. How old were you when you stopped school?

A. Twenty.

Q. Where were you living at that time?

A. Pomeroy.

Q. Idaho? A. Pomeroy, Washington.

(Testimony of Clarence W. Robnett.)

Q. How far is that from Lewiston, Idaho?

A. About thirty miles.

Q. Do you remember when you moved to Lewiston, Idaho? A. In the fall of 1892.

Q. What was the first employment that you ever had?

A. In the Lewiston National Bank. I went there December 1st of that year, December 1st, 1902.

Q. You mean 1892? A. 1892. [1958—1623]

Q. Who were the officers of the Lewiston National Bank at that time?

A. C. C. Bunnell was president, George H. Kester was assistant cashier, and Frank Kettenbach was cashier.

Q. That is F. W. Kettenbach? A. Yes; F. W.

Q. And this George H. Kester you refer to was one of the defendants mentioned? A. Yes, sir.

Q. In what capacity were you employed at the Lewiston National Bank when you first went there?

A. Janitor.

Q. How long did you hold that position?

A. Twenty-five months.

Q. What was your salary during that period?

A. Thirty-five dollars a month.

Q. After you relinquished your duties as janitor did you still remain with the Lewiston National Bank? A. Yes, sir.

Q. In what capacity?

A. Why, as assistant in the interior of the bank, clerk, and also did part of the janitor work.

Q. Did you continue in the service of the bank for

(Testimony of Clarence W. Robnett.)

any considerable length of time?

A. About seventeen years.

Q. What were you during the last ten years of your service? A. Bookkeeper.

Q. What books did you keep, Mr. Robnett?

A. All the books, at different times.

Q. When did you discontinue your services with the Lewiston [1959—1629] National Bank?

A. March 19th, 1909.

Q. You know the defendant William F. Kettenbach? A. I do.

Q. How long have you known him?

A. About twenty-five years.

Q. Where did you first meet him?

A. Lewiston, Idaho.

Q. Was he connected with the Lewiston National Bank during the period you were employed there?

A. Why, a portion of the time, not all the time.

Q. Now, take from the year 1900, was he in the bank in the year 1900? A. Yes, sir.

Q. In what capacity was he connected with the bank at that time? A. President.

Q. How long did he remain president of the bank continuously? A. Until July, 1907.

Q. And from the year 1900 in what capacity was Mr. Kester connected with the bank?

A. Cashier.

Q. Did you at any time have a conversation with the defendants Kester and Kettenbach relative to engaging with them in the acquisition of timber lands? A. Yes, sir.

(Testimony of Clarence W. Robnett.)

Q. When was this?

A. Along in the spring of 1902.

Q. Now, state what led up to that conversation, as near as you can. [1960—1630]

A. Well, it had been discussed a great deal in the bank, relative to timber matters.

Q. You say it had been discussed in the bank by whom?

A. Why, between Mr. Kester and Mr. Kettenbach, and other people that came in there and out.

Q. Now, what was the discussion that these two gentlemen had?

A. The timber matters, of other people locating around from out of Moscow, and the people in Lewiston were commencing to get interested, so Mr. Kester and Mr. Kettenbach discussed it quite often, in regards to going into the timber business themselves, and brought up Mr. Dwyer's knowledge of the timber, and that he was a timber man from the east, Minnesota, and so it kind of got to be general conversation there, until along in March, some time in March or April, why, Mr. Kester and Mr. Kettenbach were talking about the timber situation, and they stated that they believed they could make a great deal of money out of the timber if they could get in connection with Mr. Dwyer and form a partnership and let Mr. Dwyer do all the work in the timber.

Q. Now, was anything said at that time relative to the money end of the transaction?

A. No, there wasn't anything said in regards to

(Testimony of Clarence W. Robnett.)

that. They went on ahead and stated though, talked about Mr. Dwyer's knowledge of the timber, and they spoke of some timber that he knew about, claims that he had already cruised and had knowledge of, said he could put people on.

Q. Now, did they outline a scheme in that conversation in your hearing?

A. No, sir, not that I recall at the present moment.

Q. Was there any conversation had relative to how they were to get this timber located? A. No.
[1961—1631]

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Go ahead.

WITNESS.—The first conversation in regards to that was when I called on Mr. Kettenbach in his private office and had a talk with him, shortly after this conversation.

Q. Well, now, state what was said.

A. I went into the office there, Will. Kettenbach's private office, and—

Q. Was that in the bank?

A. In the bank, in the president's private office, and I says, "Will, I overheard a conversation between you and George the other day, and if there is any money to be made out of the timber I would like to get in and work with you and make some money," and Will says, "Clarence, we would like to help you, but we are going into arrangements with Mr. Dwyer and George and myself," and he says, "We are to be equal partners, and I don't see any

(Testimony of Clarence W. Robnett.)

chance for you to get in, but you can have a talk with George, and we will do all we can for you.”

Q. At that time, or prior to that time, had you heard any conversation between Mr. Kester and Mr. Kettenbach, or any plans outlined by them as to how they were to get this land? A. Why—

Mr. TANNAHILL.—Allow us the same objection, that it is leading and suggestive.

A. Yes, the plan that they talked over at different times there was relative to getting entrymen to file on the claims and pay them so much for their rights, and the matter was brought up at the time I had a talk with Mr. Kester, what each one was to do.

Q. Well, now, what was said at that time?

A. Well, I met George in the bank, and I said, “George, I have [1962—1632] had a talk with Will, and he told me to come and see you,” and I told him I had overheard their conversations and heard them talking in regards to going into the timber with Bill Dwyer and locating people on claims, and I says, “Now, if there is any way I can get into it, I am going to get in and make some money out of the timber, too,” and George says, “I will be only too glad to help you out, and I want to see you make some money, but all the claims we know of at the present time that have been cruised, we have people to put on them; but if any time we have got any timber, any claims, and you have got any entrymen or can get anybody that will locate and sell their claims to us for one or two hundred dollars, we are willing to pay that. We want to know, though, we

(Testimony of Clarence W. Robnett.)

don't want to handle anyone but what we know will turn their claims over after the proof is made."

Q. Now, had there,—before this talk that you had had that you have detailed with Mr. Kettenbach and the one you have recited as having had with Mr. Kester, had you heard them speak of the conditions on which they would locate people on these claims?

A. Yes.

Q. Well, now, when was that?

A. That was during one of those conversations in which they discussed it there; I don't know whether it came up in that conversation which I referred to when I see Mr. Kettenbach, or the one before. It was along the line of paying the entrymen from one to two hundred dollars for their right.

Q. And what was the entryman to do?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. The entryman was to go up into the timber with Mr. Dwyer and see the claim, come back and file, prove up, and deed the claim over to whoever Kester and Kettenbach designated. They were to furnish all the expenses. [1963—1633]

Q. Now, did you know of any particular locality in which they were to operate?

A. At that time it was around the Potlatch and the Pierce City district.

Q. That was in Idaho? A. Yes.

Q. Now, I will ask you whether or not these entrymen that you have referred to as having heard talked

(Testimony of Clarence W. Robnett.)

about, what were they to sell to make this \$150.00 to \$200.00?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. The timber claims they was to prove up on, to be located on by Bill Dwyer.

Q. At that time they didn't have any timber claims, did they?

Mr. TANNAHILL.—We object to it as leading and suggestive, and on the further ground that it calls for a conclusion of the witness, and not a statement of fact.

Mr. GORDON.—I will withdraw the question and ask you what the conversation was relative to that point, that you have detailed as hearing between Mr. Kester and Mr. Kettenbach?

A. Well, the entryman was to file on a claim, and for his right he was to receive \$100.00 to \$200.00, when he deeded the claim over after proof.

Q. Now, when you saw Mr. Kester what did he say to you, when you spoke with him about the conversation you had had with Mr. Kettenbach?

A. He said "Clarence, I don't see how you can get in with us at the present time, that, on account of the timber we have cruised, that we know about, that we have entrymen for at present, we have entrymen for that that will sell their right for one to two hundred dollars, but if you can furnish us any more at any time when we [1964—1634] haven't any entrymen, we will treat you right in it, as long as you don't interfere with anything we have under

(Testimony of Clarence W. Robnett.)

headway or any of the claims we want. If you want to locate anybody and go into it on your own hook it is perfectly satisfactory to us and we will see that you get all the money that you need. But any time that you have any claims in your control that we want, why, we want to have the preference right over anybody else."

Q. Now, was anything further said at that time as to the arrangement they had with the people?

A. He says, "We don't take anybody up to the timber except the ones we have an understanding with that after the proof that they deed the claim over for whatever we agree with them." It would range from \$100.00 to \$200.00, according to the entryman.

Q. I will ask you whether or not anything was said between you and Mr. Kester at that time relative to the territory in which your operations were to be confined?

A. There was nothing any more than it shouldn't conflict with them in any way.

Q. Did you ever go into the locality where they were to locate these people, before you started your operations?

A. That is, not in regards to the locality that was mentioned in this conversation, but I was out in another part of the land there, where it wasn't surveyed at that time, had squatters, but not into the surveyed land.

Q. Well, I am speaking about that that was re-

(Testimony of Clarence W. Robnett.)

ferred to, the territory that you all had in contemplation.

A. No; except only through putting on squatters on the unsurveyed, with their knowledge.

Q. Now, what was that? Tell us about that.

A. Well, there was a trip to Pierce City of Mr. Kester and I. [1965—1635]

Q. When was that?

A. That was along some time the latter part of May of 1902.

Q. Now, state how you happened to go on that trip.

A. Well, along about the last of April or the first of May, Mr. Kester told me that Dominick Cameron had located, cruised out and surveyed out some claims up beyond Pierce on one of those little townships that were coming in, and that there was about eighteen claims, and that Will Kettenbach was going to take a couple, and that each one of us could get in there and take a claim for ourselves, and they would be ready to go up some time during that *money*, and he wanted me—wanted to know if I knew of anyone that we could put up there to hold the two claims down, and I told him I thought a Normal School student by the name of Joseph McGee would do it.

Q. Who did you have this talk with?

A. Mr. Kester.

Q. Do you remember whether or not you had a talk in the presence of Mr. Kettenbach at about the same time?

(Testimony of Clarence W. Robnett.)

A. Yes, sir. We went into the directors' room, and Will Kettenbach was present, and the matter was thoroughly discussed, and mention was made of the cabin, that we had to pay \$25.00 a claim for cabins, and \$50.00 a claim for location fee.

Q. Well, was anything said at that time whether or not Mr. Kettenbach had sent some people up into the timber to locate?

A. Yes. George says, "Will has got a couple of parties up there now, holding down a couple of claims for him."

Q. Were any names mentioned as to persons they had up there?

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—I don't know how I could make it less leading.

Mr. TANNAHILL.—I don't know how you could make it more so.

WITNESS.—Yes, sir; Sol. Caldwell's name was mentioned. [1966—1636]

Q. Anyone else?

A. And Jack Lowe. Also they stated there at that time that Otto Kettenbach and his brother would very likely be up there on a couple of claims.

Q. Was anything said between you and Mr. Kettenbach relative to what you were to do with these claims?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. Yes, there was. I asked George the exact con-

(Testimony of Clarence W. Robnett.)

dition of the land up there, and how soon it would probably be surveyed, and about how long it would be before it would be thrown open, and he stated that the surveyors were in there now, and we would get in there and get our cabins before the surveyors came along, and we would hold it down, and he had made arrangements with the man that had charge of that to make a notation on the maps relative to our particular claims so as to show up on the plats when they come into the land office. He thought we would perhaps be able to file that fall.

Q. What were you going to file that fall?

A. That is, if the State didn't make the selections that we had to file, before the State got in there and made an application and had a prior right, we were to file homesteads or get somebody to file homesteads, and afterwards to relinquish and file timber and stone entries on the claims.

Q. Well, what else was said in that conversation about the cabins?

A. He stated that Dominick Cameron had arranged to have the cabins built on the claims every so far apart down the creek, and that they would be completed by the time we got up there. I told him I would go in with him and we would go up there, and that I would see this Normal School student, McGee, in the next day or two.

Q. Well, did you and Mr. Kester go up to that part of the country? [1967—1637]

A. We did, along about the latter part of May.

Q. Now, state how you went there.

(Testimony of Clarence W. Robnett.)

A. We went up to Orofino and from there we took a rig and went to Pierce City, and from Pierce City we went out with a wagon for a certain distance, and then on out with pack-horses to the claims.

Q. Did you meet anybody when you got up to these claims?

A. Yes; there was several parties in there. There was Sol. Caldwell, and Otto Kettenbach, and Mr. Forsman, and I believe Mr. Shumaker was in there at that time.

Q. Did you go alone on this excursion, or did someone go with you?

A. No; we took Joseph McGee along with us.

Q. Who is "us"?

A. The whole crowd that went from Lewiston, composed of Mr. Kester and myself, Carl Forsman and Mr. Eames.

Q. Now, state what you and Mr. Kester did when you got up to these claims?

A. I got up early in the morning and went out in one direction, and Mr. Kester went out in another; we got back to the cabins about noon, and Mr. Kester says, "Clarence, I have picked out a claim," and he says, "There seems to be more claims allotted here than there are people for them, and so I picked out one claim here, and after dinner we will go down and look it over and see what you think about it, and if it is satisfactory we will arrange for McGee to hold this claim down," and so I says, "All right." So after dinner we went down to the claim and looked it over, and talked about the amount of timber there

(Testimony of Clarence W. Robnett.)

was on the claim, and he told me that he thought Joseph McGee could hold the claim down, and that when it come time to file, if he had to file a homestead, he could file a homestead, and then relinquish [1968—1638] and either file a timber and stone entry on it or one of the rest of us file, and whatever we made out of it we would stand equally, and the expenses. I told him that was all right, that I would see McGee, and we went back to the cabin and I had a talk with Mr. McGee, and Mr. Kester and I and McGee had a talk together, and we went over the whole plan that Mr. Kester and I had outlined, and he agreed to that.

Q. Do you know McGee's first name?

A. Joseph.

Q. Did you state what you were to pay Mr. McGee for this service?

A. One hundred dollars and all expenses.

Q. After that you returned to Lewiston, did you not? A. Yes.

Q. Now, was anything done further relative to the claims you have just referred to?

A. Well, yes; when we returned to Lewiston, when Mr. Kester went home, I went right on up to the bank and met Mr. Will Kettenbach and told him just what we had done, arranged about it, and he asked about the Caldwell claim and the Jack Lowe claim, about Otto Kettenbach and his brother, and was surprised when we came back so soon, and he wanted to know where George was, and I told him that George had gone on home right from the train.

(Testimony of Clarence W. Robnett.)

Q. What became of those claims, the claim that you put Mr. McGee on?

A. Well, Mr. McGee stayed up there on the claim all summer, and in the fall when it was time for the Normal to open he came back to school that winter, and in the following spring the claim had been jumped; before time to enter it up somebody had went on there and squatted and we decided not to do anything further with it, and let it go. [1969—1639]

Q. I will ask you whether or not you ever heard any conversation between any of the defendants relative to the respective entrymen?

A. On the claims up there?

Q. Any claims.

A. Yes, a number of conversations.

Q. Do you know a man by the name of Rowland A. Lambdin? A. I do.

Q. I will ask you whether or not you heard a conversation between any of the defendants relative to Mr. Lambdin? A. I have.

Q. Now, state what it was.

A. This is between the entryman and one of the defendants?

Q. Yes.

A. Well, Mr. Lambdin came into the bank and had a talk with Mr. Kester at the window, either at the cashier's window or the assistant cashier's.

Q. One minute. I will withdraw that question and ask you whether or not, prior to this conversation that you were starting to detail, you heard any conversation between any of the defendants about

(Testimony of Clarence W. Robnett.)

Mr. Lambdin?

Mr. TANNAHILL.—We object to it as leading and suggestive.

A. Yes, sir.

Mr. GORDON.—Q. Now, state where that was and when it was, relative to the entry of the claim.

A. Why, it was in Will Kettenbach's private office.

Q. In the bank was that? A. Yes.

Q. Now, state what it was.

A. Why, George went into Mr. Kettenbach's office and stated, [1970—1640] “Well, I have seen Lambdin on the street, and he has agreed to go up and file on a claim for \$100.00 and deed it over after proof.” And Will asked George, “Do you know whether he is all right”? And George stated, “Yes, I do.” And Will stated that if George knew he was all right, for him to go ahead and make the arrangements for Bill to take him up into the timber.

Q. Who is this “Bill” that you refer to?

A. Bill Dwyer.

Q. Do you know of anything that happened next relative to that transaction?

A. Why, Mr. Lambdin came into the office and first talked with George and wanted to know where he would meet Mr. Dwyer and go up into the timber, and George told him that he would make arrangements and let him know.

Q. Did you hear any of the arrangements between Mr. Lambdin and Mr. Kester at that conversation?

Mr. TANNAHILL.—Objected to as leading and suggestive.

(Testimony of Clarence W. Robnett.)

A. You mean relative to going up into the timber?

Mr. GORDON.—Q. Any arrangements other than what you have stated?

A. Yes; it was talked over there in regards to what he was to receive for his claim and his expense money up into the timber.

Q. Well, now, what was said about that?

A. Well, he wanted to know how about his expense money.

Q. Who wanted to know that?

A. Mr. Lambdin; and George told him he would arrange for that with Bill, that Bill Dwyer would take care of him and pay all expenses, and "Now," he says, "suppose after I file I need some money, some expenses, will it be all right if I can get a little and you can [1971—1641] deduct it out of the \$100.00 I will get for my right," and George says, "Yes, I think we can arrange that all right." And I don't know as there was any particular date set at that time for him to go up to the timber, but anyway Mr. Kester was to let him know. Mr. Lambdin, I believe, was working at the laundry at this time, and he was to let him know there.

Q. Did you know a brother of Mr. Lambdin?

A. Yes, sir.

Q. Do you remember whether his name was mentioned in the conversations between the defendants?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. Why, yes; Mr. Kettenbach asked George if he wasn't a brother of Billy Lambdin, and George told

(Testimony of Clarence W. Robnett.)

him yes, and that Billy would see that he came through and everything would be all right.

Q. Did you ever see Mr. Lambdin at the bank after he had been up to view the land?

A. Why, yes.

Q. Well, I will ask you if you ever heard any other conversation between the one you have related between Mr. Lambdin and Mr. Kester and the second visit by Mr. Lambdin to the bank that you can recall now? A. Before he went to file?

Q. No; after this first one, prior to the first conversation you heard between him and Mr. Kester and the time that he did file. Have you related as near as you can the conversations that you remember? A. I don't recall any other before the filing.

Q. Well, now, any that you can remember after the filing?

A. Yes; shortly after the filing, why, Mr. Lambdin came into the bank and wanted to get some money from Mr. Kester, and Mr. Kester let him have the money; I think it was \$25.00, and took his note for it, [1972—1642] either \$20.00 or \$25.00.

Q. Now, was anything said about how this money was to be repaid?

A. Yes; it was to be taken out of the \$100.00 that he was to receive for his right.

Q. Did you hear anything further in any of these conversations relative to what was to be done with this land after proof was made?

A. Why, it was to be deeded to Kester and Kettenbach.

(Testimony of Clarence W. Robnett.)

Q. Do you know whether it ever was deeded to Kester and Kettenbach? A. It was.

Q. Do you know a Mr. Fred Shaeffer?

A. I do.

Q. Do you know where Mr. Shaeffer was employed in the spring and summer of 1902?

A. Lewiston National Bank, as janitor.

Q. As janitor? A. Yes, sir.

Q. Did you ever hear any conversation between him and any of the defendants relative to his taking up a timber claim? A. Yes, sir.

Q. Now, state when that was, as near as you can, and what it was.

A. It was a few days before his trip into the timber to take up his claim, to see his claim before filing.

Q. Where was this conversation?

A. In the working room, main body of the Lewiston National Bank.

Q. Do you remember about the time of day that it was?

A. It was along in the evening, after the bank had closed.

Q. Who were the parties to this conversation?

A. Mr. Kester and Mr. Shaeffer.

Q. Now, tell what was said. [1973—1643]

A. George and I were in the bank there together; I was working on the books, and Mr. Shaeffer came in to do the janitor work, and George says, "Fred, I have spoken to Clarence about looking after your work when you go up to see your claim, so that it will be tended to, and so as soon as Mr. Dwyer is

(Testimony of Clarence W. Robnett.)

ready to go up, why I will let you know, and you can go up and see the claim, if the price that I spoke of, of \$100.00, for your right is satisfactory to you," and Fred says, "Yes."

Q. Had you had any talk with Mr. Kester prior to this time relative to Mr. Shaeffer and a timber claim? A. Yes, sir.

Q. When was that, relative to this conversation you have detailed? A. Why, it was the same day.

Q. Now, state what time of the day that was.

A. The first conversation was in the forenoon some time.

Q. State what that was.

A. Mr. Kester came in and says, "Clarence, do you know where Fred Shaeffer is," and I says, "I think he is down in the furnace room," and he says, "I want to see him relative to taking up a timber claim," and I says, "I think he is down in the furnace room at the present time," and he says, "I will go down and hunt him up."

Q. Now, after the part of the conversation that you have detailed in which Mr. Kester had talked with Mr. Shaeffer in your presence and Mr. Shaeffer had said all right to the proposition that was made was anything further said in that conversation, any other arrangements made between Kester and Shaeffer?

A. Why, Kester asked him about the expense money, if he needed any money to go up there to see the land to pay his expenses, and he says, "No, I have got some," and George told him, he said, "If

(Testimony of Clarence W. Robnett.)

you need any more Bill Dwyer will look after you and pay the expenses." [1974—1644]

Q. Now, was there any conversation between you and Mr. Kester the same day as to what was to be done with the \$100.00 that was to be paid Shaeffer?

A. I don't know whether it took place that day or not, but it was after when George asked me about the janitor work; he told me that Shaeffer was going to go up into the timber and take up a timber claim and they were going to pay him \$100.00 for his right. Now it might have been after Fred had gone away I had another talk with Mr. Kester in which I asked him about the Shaeffer claim and asked him if Fred was going to get a good claim, and he said, "Yes, a good claim," and he said, "I offered Fred \$100.00 and told him it would help pay for that lot up there that he bought," and he said, "It seemed to please him very much, and he was perfectly satisfied to sell his right for \$100.00."

Q. Do you know who went into the timber with Mr. Shaeffer? A. Mr. Dwyer went up with him.

Q. Was anything said by Mr. Kester at that time as to the value of the claim?

A. He said it was worth about \$3,000.00.

Q. Now, I will ask you what, if anything, you know of the various timber claims that Kester and Kettenbach were connected with from that time on?

A. Yes.

Q. Now, how did you know that, Mr. Robnett?

A. From various conversations, also in assisting them in a great many different ways, also in making

(Testimony of Clarence W. Robnett.)

out plats, and loaning them my pencils to make the check marks in their books, and talking with them in regards to the entrymen as they were marking off the names of the entrymen that had filed, after they had filed on them.

Q. You said something in regard to making plats. Who made these plats? [1975—1645]

A. Well, they made a great many, and I made a great many. And in checking off the different timbers at times when there was sales of them.

Q. Let me ask you how they do. They keep a plat of all of their holdings?

A. Yes; they had two little, what is known as field-books, with township maps in them.

Q. Now, what was kept in those field-books, and how was the information kept in them?

A. Why, they had different ways of designating certain claims, some certain colors for one thing and another for another, and when they would get a claim, a person would file on a claim, they would always mark it off in the book if they were going to get it.

Q. How did they mark it off? Did this book have townships and sections and quarter sections in it?

A. It had the regular township map, only it had been paged and subdivided into quarter sections.

Q. And were the properties that they owned or claimed marked off in those books by cross-marks, or how?

A. By colored pencil, by drawing a line, just mak-

(Testimony of Clarence W. Robnett.)

ing the paper according to the land claimed of a certain color.

Q. Did you have anything to do with the making of those books?

A. No, they kept their own books, but I often made up plats of claims at certain times.

Q. Now, relative to the timber that you located people on, I will ask you to state whether or not they were advised of the timber that you were operating in?

A. Yes, sir.

Q. How were they advised of that?

A. By conversations. [1976—1646]

Q. In any other way?

A. Well, yes, a good many ways, sometimes when the money was advanced for the proof, and trips that I took into the timber.

Q. I will ask you the direct question: Did they keep plats of the timber lands that you were dealing in?

A. Yes.

Q. How did they keep them?

A. Why, they kept that in books there, and then in any of the townships where I had any timber they would mark it in their books with a little different colored pencil from the ones they had of their own.

Q. Was that in the same books that they kept their holdings?

A. Yes.

Q. Were they advised in that way of all the claims that you procured people to locate on?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. Not in that way, they wasn't advised of all of

(Testimony of Clarence W. Robnett.)

them, only a great many claims they didn't care anything about, but they were advised of all of them; but there was conversations of the location and the townships.

Q. Now, do you know whether or not Mr. Shaeffer used his own money to make proof, or anything about that? A. He did not.

Q. Tell what you know about it.

A. When it came time for him to make proof Mr. Kester gave him the money to go over to the land office and make proof.

Q. Now, do you ever remember of any conversation between any of the defendants and Mr. Kester as to what he should say when he made his proof?

Mr. TANNAHILL.—We object to that as incompetent, irrelevant and immaterial. [1977—1647]

A. Why, yes, they discussed it there, and Mr. Kester told Mr. Shaeffer that Mr. Dwyer would inform him in regards to the questions he should answer and how they should be answered, and I don't know but what he went over with him a portion of the questions himself; it seems to me he did in one of the conversations there in the bank.

Q. Now, do you remember whether this conversation was relative,—I will ask you which papers this conversation was relative to, the filing papers or the final proof papers?

A. Why, in regards to the filing, Mr. Kester and him had a conversation then, and he told him that Mr. Dwyer would go up to the land office with him and see to his filing; and when it come down to the

(Testimony of Clarence W. Robnett.)

proof, relative to the questions there, he told him that Mr. Dwyer would tell him how to answer the questions on final proof.

Q. Do you remember whether the questions he would have to swear to, what he would have to state when he made his final proof as to where he got the money—

Mr. TANNAHILL.—It is understood that we have the same objection to this class of evidence, relating to final proof, without repeating the objection.

A. Yes; it was brought up in regards to the money, and he was told how to answer that.

Mr. GORDON.—I am speaking now about the filing.

A. No; there wasn't anything further than that Mr. Dwyer would see that he had the proper papers and his filing would go through all right.

Q. Do you remember whether there was anything said about where he got the money?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. He told him how to answer those questions when he made final proof.

Mr. GORDON.— [1978—1648] Q. I will ask you, Mr. Robnett, whether or not there was a set of final proof papers kept there in the bank?

A. Yes, a little later on; there wasn't right at this time.

Q. Do you know how they got into the bank?

A. Yes; I took them in there myself.

Q. Where did you get them?

(Testimony of Clarence W. Robnett.)

A. In the land office.

Q. I will ask you whether or not those papers were ever used? A. They were used very frequently.

Q. For what purpose?

A. To coach witnesses,—I mean coach entrymen before making their final proof.

Q. Now, I will ask you if you ever heard a conversation between Mr. Kester and Mr. Kettenbach relative to the Shaeffer claim while Mr. Dwyer and Mr. Shaeffer were in the timber? A. Yes.

Q. Now, tell what you know about that.

A. It was,—George says to Will, “Shaeffer and Bill are up in the timber to see the claim that Fred is going to file on,” and he says, “I had quite a talk with Shaeffer and told him I would give him \$100.00 for his right, and he is to deed the claim over as soon as he makes proof, and he is going to use the money to make a payment on his lot.”

Q. Now, was anything said at that time by Mr. Kettenbach as to when they were expected back, or anything of that kind?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. I think that evening, or the following evening.

Mr. GORDON.—Q. Do you remember what was said? [1979—1649]

A. Well, he says, “They will be back,”—Mr. Kettenbach asked George when they would be back, and he said, “They will either be back this evening or to-morrow evening.”

Q. Anything else said about it?

(Testimony of Clarence W. Robnett.)

A. Why, he says, "What is the value of that claim?" and he says, "It is worth \$3,000.00 or better."

Q. Do you know a man named John Roos?

A. I do.

Q. Do you know a man named Sam. Hutchings?

A. I do.

Q. Do you remember ever hearing a conversation between Mr. Kester and Mr. Kettenbach relative to those gentlemen taking up claims? A. Yes, sir.

Q. Well, state what it was and where it was.

A. It was in Mr. Kettenbach's private office.

Q. Well, who did the talking?

A. Why, Mr. Kester came in and says, "Will, I have seen Johnny Roos and Sam. Hutchings out on the street, and I have been talking to them about taking up timber claims, and I believe they will go up into the timber and file, and will deed over their claims for a couple of hundred dollars apiece."

Q. Do you remember whether Mr. Kettenbach said anything at that time?

A. He says, "That will be all right. Has Bill got some claims for them at the present time?" And Mr. Kester says, "Well, I will see him either this evening or to-morrow morning, and I think that he has."

Q. Do you know Ivan R. Cornell? A. I do.

Q. Do you know whether or not Ivan R. Cornell took up a claim under the timber and stone act?
[1980—1650] A. I do.

Q. Do you know anything relative to his entry?

(Testimony of Clarence W. Robnett.)

A. Yes.

Q. Did you ever hear any conversations between any of the defendants relative to that claim?

A. Yes, sir.

Q. Will you state between whom those conversations were? Who was this conversation between?

A. Mr. Kester and Mr. Kettenbach.

Q. Where was it?

A. In Mr. Kettenbach's private office.

Q. At the Lewiston National Bank?

A. Yes, sir.

Q. Do you know whether this was before the entry was made by Mr. Cornell? A. Yes, sir.

Q. Can you give any idea of the year that this conversation took place?

A. I think that was along some time in the early part of 1903, or late in the fall of 1902, I don't know which.

Q. What was said between the defendants?

A. Why, Mr. Kester came into Mr. Kettenbach's private office and said, "I met an old schoolmate of mine from Portland. He went to school with me at Bishop Scott's Academy, and he seems to be in pretty hard straits, and I spoke to him about taking up a timber claim and that we would give him \$100.00, and he needs the money bad, and I think he is going to take the offer, and I believe we can put him on the claim that Bill Dwyer is holding down as a homestead." And Will asked George all about him, and wanted to know if he could be depended on, and George says, "Yes, I think he can; he needs the

(Testimony of Clarence W. Robnett.)

[1981—1651] money, and I believe he will come through and sell his right for \$100.00,” and he says, “Well, go see Bill and see if he can take him up to the timber, and if everything is all right with you we will go ahead.”

Q. Do you know Mr. Ivan R. Cornell when you see him? A. I do.

Q. Did you know him at the time of this conversation you relate? A. No, I didn't.

Q. Where did you first see him?

A. It was either inside of the bank or just outside, on the sidewalk in front of the bookkeeper's window, outside on the street, near the iron railing.

Q. Now, was he alone or with whom was he?

A. He was talking with Mr. Kester.

Q. Now, what was that conversation?

A. Why, I seen them there talking, and that is the first time I ever saw him, and when Mr. Kester came in I asked him if that was Cornell, the party he was talking to Mr. Kettenbach about, and he said he was.

Q. Did you hear any conversation between Mr. Cornell and Mr. Kester on that occasion?

A. No; but I heard one later, in the bank.

Q. When was that?

A. It was just before he went up into the timber, and Mr. Kester was talking to him, I think at the cashier's window, and he asked him, Mr. Kester asked Mr. Cornell when he would be ready to go up into the timber, what time, and he said, “I can go any time,” and he says, “Well, we have made arrangements for you to go, and you be down to the train

(Testimony of Clarence W. Robnett.)

to-morrow morning, and Mr. Dwyer will be there and take you out to the timber and show you the claim. He will pay all your [1982—1652] expenses and your filing fee when you come back, up to the land office, and see about your filing and everything is arranged.” Mr. Cornell says, “All right,” he says, “I will be there.”

Q. Now, did you ever hear a conversation between Mr. Cornell and Mr. Kester about the time of final proof, or after final proof, in the bank?

Mr. TANNAHILL.—We object to that as irrelevant and immaterial.

A. Yes, sir.

Mr. GORDON.—Q. Where was that?

A. That was at the bookkeeper’s window, and he seemed to be—

Q. Who was he?

A. Mr. Cornell; he seemed to be rather out of sorts in regards to something, and didn’t seem to be willing to come through according to the agreement, and him and Mr. Kester talked for quite a while, and after they got through I asked Mr. Kester what was the trouble, and he says, “He is a little out of sorts and don’t want to come through for the \$100.00, but I guess he will come through all right, and everything will be all right.”

Q. Now, did Mr. Kester say anything else relative to what he had done for—

A. Yes; he says, “I picked him up out here on the street in hard circumstances, and loaned him \$10.00 to help him get along, and gave him a chance here to

(Testimony of Clarence W. Robnett.)

make a hundred dollars, and now, since he is working and got a little money he don't seem to appreciate that, but yet I think he will come through, and everything will be all right; he will make the deed and accept the \$100.00, and deduct what I have already paid him."

Q. Do you remember ever hearing a conversation between any of the defendants relative to contests that Mr. Dwyer was filing? [1983—1653]

Mr. TANNAHILL.—We object to that as irrelevant and immaterial.

A. Yes, sir.

Mr. GORDON.—Q. Who were the parties to this discussion?

A. Will Kettenbach and Mr. Dwyer.

Q. Do you remember whether Mr. Kester was there or not?

A. Well, now, there was several at one conversation that took place in Mr. Kettenbach's office, where Mr. Dwyer and Mr. Kettenbach and Mr. Kester were present, all three of them.

Q. Now, who was the spokesman at that conversation? Tell the conversation as well as you can.

A. They were discussing in regards to the homesteads, homestead entries of the timber, that were just thrown open, and Bill Dwyer stated that he was going to contest all those entrymen and locate them, and Will Kettenbach asked if there was any limitation to contests, to how many contests one party could file, and Mr. Dwyer said, no, there wasn't, he could file as many contests as he wanted to, and he

(Testimony of Clarence W. Robnett.)

could put whoever he wanted on the timber if he won out, and Will told him to go ahead and contest them and get all the claims that he could.

Q. Did Mr. Dwyer discuss the character of these entrymen, or how they had located on the homesteads?

A. He said, "They are simply holding down the claims under the homestead to beat the State out, to keep anybody else out, and as soon as,—they intend to relinquish and file a timber and stone entry on it, and I am just going to beat them to it before they get a chance to relinquish their homestead filing."

Q. Now, you say that you understood that Mr. Cornell was to get Mr. Dwyer's homestead claim?
[1984—1654] A. Yes.

Q. State what you know about Mr. Dwyer's homestead claim, in that section of the country.

A. Why, Mr. Dwyer was holding down a homestead, had a cabin on it, and was holding it down, and it was rumored that he hadn't a homestead entry and couldn't hold the claim under the homestead, and that there was other people going to take it, and they thought they had best put somebody on it before somebody else took the claim.

Q. Do you know whether or not anything was said in that conversation about Mr. Dwyer having exhausted his homestead right?

A. No; I couldn't say whether it was in that conversation or not.

Q. Did you ever hear it, at any other conversation between these parties?

(Testimony of Clarence W. Robnett.)

A. Yes; I heard it discussed relative to his holding down a homestead up there when he hadn't a homestead right.

Q. Now, after Mr. Kettenbach had made the assertion and asked the questions that you have detailed here, did you state whether or not Mr. Dwyer said anything as to what he was going to do with the claims that it had been suggested that contests be filed upon?

A. He says, "I have got plenty of entrymen to put on all the good claims I can get and contest them out," and he says, "They don't know, when you file contests, whether I am going to locate people on them or file scrip on them."

Q. Was anything said at that time relative to the locality of lands that were to be involved in these contests?

A. Referring to the contests that come in, about six or eight, I believe.

Q. Do you remember when these were to come into the market, I mean, be opened to entry?

A. Along in the spring of 1904. [1985—1655]

Q. Can you tell the townships, or some of them?

A. Well, there was 38-5 and 6; 37,—I think it was 37-7; and there was ranges 38 and 39, I don't recall just exactly—

Q. Do you remember whether there was anything in 40 or not?

A. No, I don't remember whether there was anything in range 40 at this time or not.

Q. Do you know whether or not contests were filed

(Testimony of Clarence W. Robnett.)

by the defendant Dwyer?

A. Yes; he filed a number of contests. He filed about eighteen at one time, fourteen at one time.

Q. Do you remember any further conversation between any of the defendants relative to these contests?

A. There was another conversation that took place at the cashier's window.

Q. When was that?

A. That was a short time after this. Will Kettenbach and I were standing there talking, along during the noon hour, between twelve and one, and Mr. Dwyer came into the bank, and Will says, "What have you been doing to-day, Bill?" And he says, "I have been filing contests." "How many did you file?" "Fourteen or eighteen." And I spoke up and I says, "What are you going to do, Bill,—take all those homesteads up there?" And he says, "Yes," he says, "I will file forty more if it is necessary."

Q. Did you know Mr. Jackson O'Keefe in his lifetime? A. I did.

Q. I will ask you to state whether or not you were ever a party to a conference between Mr. Jackson O'Keefe and any or all of the defendants?

A. I was present at a number of conversations that took place between Mr. Kester and Mr. O'Keefe, and Mr. Kester and Mr. Kettenbach and Mr. O'Keefe.
[1986—1656]

Q. I will ask you how you heard all of these conversations, Mr. Robnett?

(Testimony of Clarence W. Robnett.)

A. Why, they took place in the main body of the bank-room.

Q. Well, did you just listen, or were you called into the conversation?

A. No; they were just conversations that took place there relative to the timber, and I overheard them as I was going ahead with my work.

Q. Now, will you state, as well as you can, the size of the space that these conversations took place in?

A. Well, it was more in the shape of a,—the bank-room there, the inside of the building was more in the shape of an L, and just about over here the—

Q. Well, now, I will ask you this: The banking-room was on the first floor of the building, was it not? A. Yes, sir.

Q. And they had a railing and windows around two sides of the room, did they not? A. Yes.

Q. That went back to one side of the building and then formed a right angle and connected with another side? A. Yes.

Q. In other words, two sides of the first floor, the walls and this railing made the space that you refer to? A. Yes.

Q. Will you tell, as well as you can remember without measuring it, about what the length of the sides of this space was?

A. Why, the north side—

Q. Now, we don't know that, whether it is north or south here. State the lengths of the railings as they were. [1987—1657]

A. The first railing on the bookkeeper's desk,

(Testimony of Clarence W. Robnett.)

over next to the bookkeeper's window, the railing was about eight feet, and then for a space there by the window, perhaps two feet and a half, and then another little jog running up from the window I have just described is the assistant cashier's window, and then a jog running up to the cashier's window of about four feet, and then a space of about two feet and a half to where it turned again, and run direct east to the president's office.

Q. Now, that doesn't mean much. What was the space along the front of the bank that they had enclosed, what was the outside distance from one side of it to the other, was it ten feet or forty feet?

A. Well, now, in one way—

Q. I am asking you,—it couldn't be two ways if I am asking you for the front way.

A. Well, that was a distance of about thirty feet.

Q. Well, then there was another side of this inclosure that ran at right angles to that, is that correct?

A. Yes.

Q. And how long was that side?

A. About twenty, eighteen to twenty.

Q. Now, did the ends of those two railings each meet the wall, one wall of the building or the other?

A. Yes.

Q. Well, then there was a space in there of about thirty by twenty feet, is that correct?

A. Yes.

Q. Now, where was the office of Will Kettenbach, relative to this inclosure that you have described?

A. The office was in one corner.

Q. And where was the directors' room, relative to

(Testimony of Clarence W. Robnett.)

this inclosure? [1988—1658]

A. It was across the hallway on the same floor.

Q. And to get from the inside of the bank where the teller's window, and the bookkeeper's and the cashier's window was, you had to go out of that inclosure and across the hall?

A. Yes; an opening ran underneath the stairway.

Q. Now, where was Mr. Kester's desk relative to the office of Mr. Will Kettenbach?

A. Right alongside of it in the inclosure.

Q. And was this office of Mr. Will Kettenbach's a room off from the inclosure that you have described, or was it in a glass partition?

A. Just a glass partition, part way up, part glass and part grill.

Q. Did it go clear up to the top of the ceiling?

A. No; just about seven feet.

Q. And you entered that from the inclosure that you have described? A. Yes.

Q. And you say that Mr. Kester's desk was adjoining that?

A. Yes, sir; right alongside of it.

Q. Did the back of the desk go up against it?

A. The back of the desk—

Q. When he sat at his desk he faced right at one of the sides of Mr. Will Kettenbach's office?

A. Yes, sir.

Q. Where was your desk, relative to Mr. Kester's desk?

A. The flat-topped desk was right close to his, the distance from one corner of that desk to Mr. Kes-

(Testimony of Clarence W. Robnett.)

ter's desk wasn't over two feet or two feet and a half.

Q. How far was your desk from the window where you kept the books?

A. About ten feet. [1989—1659]

Q. Mr. Robnett, I was asking you whether you had ever heard any conversations between Jackson O'Keefe and any of the defendants? A. Yes, sir.

Mr. TANNAHILL.—Had you completed your examination on these contests, Mr. Gordon?

Mr. GORDON.—Yes, unless there is something that I think of that I may want to ask him.

Mr. TANNAHILL.—The defendants now move to strike out all of the evidence of the witness relative to the filing of contests by the defendant William Dwyer, upon the ground that it is irrelevant, incompetent and immaterial, and does not tend to prove or disprove any issue in the cause.

Mr. GORDON.—Q. Did you ever hear any conversation between Mr. Jackson O'Keefe and any of the defendants relative to taking up timber claims?

A. Yes, sir.

Q. Now, do you know when this was?

A. (No answer.)

Q. I don't ask you to tell the exact date—as near as you can?

A. It was along in the winter, or rather the fall of 1903, and the spring of 1904.

Q. Now, where was the conversation, and between whom was it?

A. Why, Mr. Kester and Mr. Kettenbach and

(Testimony of Clarence W. Robnett.)

Mr. O'Keefe came out of the directors' room; they was in there having a talk, and they stopped in there while Mr. O'Keefe was waiting for the stage to go to Asotin, and Mr. Kester asked him regarding the securing of certain entrymen to take up claims, and he spoke about certain parties in Asotin that he would get.

Q. Do you remember him naming those parties, who they were?

A. Well, it was two relatives of his.

Q. Do you remember what their names were?

A. The Taylors—the two Taylor boys. [1990—1660]

Q. And do you remember anybody else?

A. David Bingham; and then he thought there would be two others that could be secured.

Q. Do you remember whether he named them or not?

A. No, I don't think they were named at that time.

Q. Now, did you hear anything of the arrangements that they had, or were there any?

A. Yes; they spoke then relative to what about what they would want, and he said, "Oh, I think you can get them for perhaps \$150 apiece, maybe you may have to pay them \$200, but anyway you can get them at what is right, and we can depend on them."

Q. Now, was anything said about the money at that time for expenses?

A. Yes; they said whatever their expenses are, Mr. Kester says, "Jack, whatever their expenses are going up there you pay it by drawing checks and

(Testimony of Clarence W. Robnett.)

keeping a memorandum of it, so we will know just what it is.”

Q. And did you ever hear any further conversation after the—or, do you know whether any of these entrymen were procured? A. There was five.

Q. Do you remember who they were?

A. Well, there was the two Taylor boys, and this Bingham, and Drummel—

Q. What did you say?

A. No—I can’t recall.

Q. Dammarell?

A. Dammarell—that’s the name.

Q. Was there a man named Prentice?

A. Yes, a man named Prentice.

Q. Well, do you know of any others?

A. Well, Mr. O’Keefe.

Q. Now, do you remember any other conversation that was had between any of the defendants and O’Keefe prior to the filing of entries [1991—1661] by these entrymen?

A. Yes, there was several different conversations took place in regards to these claims. They were always mentioned as the O’Keefe claims. There was conversations took place between Mr. Kester and Mr. Kettenbach, and also between Mr. O’Keefe and Mr. Kester and Mr. Kettenbach.

Q. Now, do you remember the occasion of these gentlemen that you have mentioned making their proof?

A. Why, prior to the time of making proof Mr. O’Keefe was in the bank, and George told him when-

(Testimony of Clarence W. Robnett.)

ever—he says, “Jack, whenever you are ready for the proof—the day of the proof—why, you come over here and get the money and give the boys the money, and then take them up to the land office, and afterwards why you can look after making up the transfers—look, after that—take the matter in hand and look after it, and see that everything goes through all right.”

Q. Well, do you know whether or not he got the money there? A. Yes, sir.

Q. Do you remember how he got it? State what you know relative to that transaction.

A. Why, I know that he came into the bank and got the money and gave a check for it, and I think it was either kept in—well, in fact, paid in a cash item, or entered up to the Asotin Land and Irrigation Company.

Q. Do you know whether or not Mr. Kester and Mr. O’Keefe were engaged in any other business?

A. Yes; they were interested in the Cloverland.

Q. Cloverland what?

A. Well, it was an irrigation project up there along Cloverland.

Q. Well, do you know whether or not they were officers in that concern?

A. Mr. Kester was the only one that was interested, and Mr. O’Keefe; the two of them owned the proposition. It was the Asotin [1992—1662] Land and Irrigation Company.

Q. You mean their account was carried in the Lewiston National Bank in that name?

(Testimony of Clarence W. Robnett.)

A. Yes, sir.

Q. Well, do you know what became of the five claims you have referred to, and whether there was ever a settlement made of them?

A. Yes; at different times they were deeded to Kester and Kettenbach.

Q. Well, do you know anything about who paid for the claims?

A. Well, the claims were paid for by Kester and Kettenbach.

Q. Well, do you know that of your personal knowledge? A. Yes, sir.

Q. Now, state what you know about that.

A. Well, from conversations that took place, it was brought up at different times in regards to the settlement in regards to these different claims, and in making up—taking up the items out of the bank, and making the cash items, it was taken up by Kester and Kettenbach and included at different times in the cash items, it was taken care of.

Q. Well, now, explain what you mean by the cash items.

A. Well, now, if Mr. Kester or Mr. Kettenbach wanted to use any cash for any particular purpose, why they would take the cash and put in a cash item, and that was carried there until they wanted to issue their checks.

Q. Now, what do you call a cash item—a memorandum?

A. Yes, a memorandum that there is so much cash taken out of the cash by a certain party, and that is

(Testimony of Clarence W. Robnett.)

counted as cash until it was taken up by giving a check.

Q. And did you have anything to do with attending to that part of the banking business?

A. Yes, sir.

Q. Well, now, state how it came about. [1993—1663]

A. Well, now, there was the accounts; I was on the depositors' ledger and also worked at the window and added up the cash items, and had charge of the different books in which those different accounts was run, so that I knew how the transactions was entered there, and also the Asotin Land and Irrigation Company, there was some of those items went there, and afterwards they were taken up and settled by credits in disposing of it.

Q. Now, these cash items—these memoranda that were carried in the cash—would they show upon their face what they were for, or anything of that kind? A. Sometimes, yes.

Q. And do you remember any of the transactions of that account relative to the O'Keefe claims?

A. Yes; I remember the transactions that took place; that is, I don't recall clearly just how it was, but I know the transactions were fixed up there whereby the money that was finally advanced by Kester and Kettenbach they paid for them.

Q. Do you know a man by the name of Goldsmith?

A. I do.

Q. What is the name of the man Goldsmith that you know? A. M. L. Goldsmith.

(Testimony of Clarence W. Robnett.)

Q. And what was his calling?

A. Why, a farmer, and also a Deputy United States—I mean a Deputy State Land Selector.

Q. And do you ever remember of hearing any conversation between him and any of the defendants, relative to land transactions? A. Yes, sir.

Q. State when the first one was, as near as you can remember.

A. The first conversation took place in Mr. Kettenbach's office.

Q. Approximately when was that?

A. Why, I think some time in December, in 1903—just around the first of the year. [1994—1664]

Q. Do you mean the last of the year?

A. The last of the year, or the first of January, 1904.

Q. Now, between whom was that conversation?

A. The conversation was between Will. Kettenbach, George Kester and Goldsmith.

Q. Well, did you hear the conversation between those gentlemen and anyone else prior to the conversation you refer to?

A. Why, the conversation prior to that time was between Mr. Dwyer and Mr. Kettenbach and Mr. Kester.

Q. Well, now, was that just prior to this December or January?

A. Yes, just prior to the conversation with Goldsmith.

Q. And where was this conversation?

A. In Mr. Kettenbach's private office.

(Testimony of Clarence W. Robnett.)

Q. And will you state what was said at that conversation? What was this conversation between Dwyer, Kester and Kettenbach?

A. Why, it was relative to getting Mr. Dwyer appointed as a timber cruiser, there, to go up and estimate that timber for the State.

Mr. TANNAHILL.—Now, just wait a minute. Just let him state the conversation.

Mr. GORDON.—Q. Well, state what you can relative to the conversation, as near as you can.

A. Well, the gentlemen were sitting in Mr. Kettenbach's private office, and George spoke up and asked if there was any way that Bill could get the position, so that he could go up there and pick out this land that the State was going to select, and also to catch on to land that they could get a hold of, and Will. Kettenbach spoke up and said, "Yes, I think I can arrange that"; he says, "Goldsmith, I think, will do what I want him to, and I will have a talk with him and see if I can't have it arranged." Well, George stated if it could be done why it would very likely help them out a great deal, and be a good thing.

Q. Was anything said as to how it was to help them out? [1995—1665]

A. "Of course," he says, "if he goes up into the timber there to make the selections of the State land, why he could leave out the claims that we want, and make a notation of them, so that we can locate the claims."

Q. Now, do you know whether the State had made

(Testimony of Clarence W. Robnett.)

its selections then that were subsequently made in April? A. No, they hadn't.

Q. Had the plats been filed?

A. No; they hadn't made them.

Q. And was this conversation relative to picking the land that the State would file on? A. Yes.

Q. Well, now, do you know anything further that was said at that time?

A. Well, Mr. Kester said, "Well, Will, you see Mr. Goldsmith and see what can be done, and if we can arrange that Bill can go up into the timber with him," and Will said, "All right, I will get word to Mr. Goldsmith to come in and see me."

Q. Well, did you ever see Mr. Goldsmith at the bank? A. Yes, sir.

Q. After that? A. Yes, sir.

Q. How long afterwards?

A. Why, it was only a day or two.

Q. Well, now, do you know who he saw at the bank?

A. Why, he was talking with Mr. Kettenbach first.

Q. And did you hear what was said?

A. Just a portion of what was said.

Q. Well, now, did you hear anything that was said relative to Mr. Dwyer's employment?

A. Yes. Mr. Kettenbach says, "Mr. Goldsmith, what I sent for you for was to see if we couldn't arrange to appoint Mr. Dwyer as [1996—1666] one of your selectors to cruise the timber and make the selections for the State," and Mr. Goldsmith says

(Testimony of Clarence W. Robnett.)

“Well, I really don’t know how I can do that, but I will see.”

Q. Did he give any reason?

A. Well, he said Mr. Dwyer was out of the state, and there might be objections to it, and he thought that perhaps already there had been people spoken to by Mr. Jackson for that position, but if he could arrange it he would do so.

Q. Well, did Mr. Kettenbach have anything to say about the objections that were raised?

A. Well, he said that didn’t make any difference. He says, “You can state that the only man that knows anything in regards to that country out there is Mr. Dwyer, and he is just across the state line, and Clarkston is practically the same as Lewiston; he is just across the river, and there is no reason why that should make any difference, and he is operating up there in the timber, anyway, and that wouldn’t be any reason why you should not get a man across in Clarkston.” Mr. Goldsmith said, “I will see what I can do, and if I can possibly arrange it why I will have Mr. Dwyer go up with me, and I will let you know.” And a few days after that Mr. Goldsmith came into the office to see Mr. Kettenbach, and told him he could arrange to employ Mr. Dwyer.

Q. And do you know whether Mr. Dwyer was employed? A. Yes, he was.

Q. By this Mr. Goldsmith? A. Yes, he was.

Q. Now, do you know whether there was any conversation between Mr. Goldsmith and any of the defendants relative to lands that the defendants did

(Testimony of Clarence W. Robnett.)

not want selected? A. Yes, sir.

Q. When was that?

A. That was just prior to the time that the State made its selections. [1997—1667]

Q. Now, tell what you know about that.

A. Well, Mr. Goldsmith came into Mr. Kettenbach's private office and Mr. Kettenbach handed him a plat and a paper.

Q. Well, now, do you know what this paper was?

A. Nothing more than what Mr. Kettenbach told me afterwards. I didn't hear the conversation that took place there, and after Mr. Goldsmith went out I asked Mr. Kettenbach if he had arranged to hold out my claim.

Q. What was your claim?

A. That is the claim known as the Mrs. Harris claim; and he says, "No, Clarence, I forgot all about it, but," he says, "I gave him a list of claims that Bill had given me to have him hold out"—that there were maps prepared by Bill—"but," he says, "if you will speak to Mr. Goldsmith about it he will hold out your claim. Write out the numbers of it on a slip of paper and hand it to him and tell him that I told you to give it to him."

Q. Now, did you hear any conversation between Mr. Kettenbach and Mr. Dwyer just prior to that time? A. Yes.

Q. Well, state what that was.

A. Well, Mr. Dwyer came in from the timber a few days ahead of Mr. Goldsmith, a day or two, and he came in there—

(Testimony of Clarence W. Robnett.)

Q. In where?

A. In Mr. Kettenbach's private office.

Q. Yes?

A. And Will says, "Well, hello, Bill, when did you get back?" He says, "I have just got in from the train." He says, "How is everything going?" He says, "All right." He says, "Have you got memorandums made of the land you want out—not selected by the State?" and he says "Yes." He says, "Get them up in shape and I will see Goldsmith and give them to him."

Q. Now, was anything said about Mr. Melvern Scott at that time? [1998—1668]

A. Well, he said that Melvern Scott had come down with Goldsmith at the time he came in.

Q. Well, do you know whether anything was said about Mr. Scott and Mr. Fitzgerald relative to Squatters?

Mr. TANNAHILL.—We object to that as immaterial, leading and suggestive.

Mr. GORDON.—Well, I will withdraw the question.

Q. Now, did you see Mr. Goldsmith relative to the Harris claim? A. I did.

Q. What did you say to him?

A. Why, I met him up in—I think it was in front of the Raymond Hotel and gave him the slip of paper and told him that that was the claim that I wanted him to hold out, and that Mr. Kettenbach had told me to tell him so, and he says, "All right, I will see what I can do for you."

(Testimony of Clarence W. Robnett.)

Q. Well, do you know whether he held the claim out or not?

A. No. The claim was in the first papers that was put in of the timber—or in his report—that claim was included; and I spoke to him about it, and he says, “Well,” he says, “I think that can be arranged later, when they have got to make an amended filing to these conflict entrymen, and if they don’t go ahead and contest them or make entries before a specified time why it will be dropped out, and you can go right ahead.”

Q. Do you know of any other land than this claim that you have referred to that the defendants desired Mr. Goldsmith not to include in the State selections?

A. Well, after the State had made the filing of conflict claims, Mr. Kester and also Mr. Kettenbach both made the statement that there would be plenty of timber left after the State went through; that they wasn’t going ahead with the contest of entrymen; that they just had all the timber they wanted for all their entrymen, and that included a number of fine homesteads up there of people that were squatting on the [1999—1669] land.

Q. Do you know Guy L. Wilson? A. Yes, sir.

Q. Do you know where his claim is located?

A. It is located in this bunch of timber that the State didn’t go ahead and make final selection of.

Q. Do you know what land was to be cruised by Mr. Goldsmith and Mr. Dwyer?

A. It was the six townships that were to come into the market on the—

(Testimony of Clarence W. Robnett.)

Q. April 25th, 1904? A. Yes.

Q. Well, was that in the vicinity of the claim that I have referred to—the Adams claim? A. Yes.

Q. You said a while ago that Mr. Kettenbach gave Mr. Goldsmith a list of the lands to be left out, did you? A. Yes, sir.

Q. Well, do you know how that was done? Was it by plats or what?

A. A plat—plats and a roll of paper with the numbers of the paper.

Q. Do you know where that plat was made up?

A. Why, Mr. Dwyer made it up and gave it to Mr. Kettenbach.

Q. Did you see that at all?

A. No, I didn't see the plat, any more than just seeing them handle the plats and the paper.

Q. When was that?

A. That was just before they made their filing, the same day.

Q. Well, where did you see it?

A. In Mr. Kettenbach's private office.

Q. How did you happen in there? [2000—1670]

A. I wasn't in his office; I was standing there waiting for Mr. Goldsmith to come out so that I could find out whether Mr. Kettenbach had made any mention of my claim.

Q. That is the Harris claim you mean?

A. Yes. Mr. Kettenbach and I had had a conversation prior to that time in which this was discussed, what they were going to do, and I spoke to him and told him to put my claim in.

(Testimony of Clarence W. Robnett.)

Q. Now, do you remember anything about the line-up at the land office April 25th, 1904? A. Yes, sir.

Q. Do you know whether or not the defendants had anything to do with that line-up?

A. They had about 18 entrymen in there.

Q. Well, do you know who the entrymen were that they had in that line?

A. Why, I can call quite a number of them. There were the entrymen there that Jackson O'Keefe had.

Q. The five that you have mentioned? A. Yes.

Q. And was Jackson O'Keefe in the line?

A. Yes; and there was Mrs. White.

Q. What Mrs. White?

A. Mrs. Elizabeth White.

Q. And is she a relative of any of the defendants?

A. She is the mother in law of Mr. Kettenbach.

Q. And who else?

A. And Will. Kettenbach's wife, and Mrs. Edna Kester, wife of George H. Kester, and Miss Kettenbach.

Q. What Miss Kettenbach?

A. An aunt of Will. Kettenbach; and Mrs. Hallett.

Q. Who is she? Is it Martha E. Hallett? [2001—1671] A. Martha E. Hallett.

Q. Was she related to any of the defendants?

A. No, she wasn't related, but she was a friend of Mr. Kester's and was stopping there at his place; and Mamie P. White, wife of Will. White. Will. White is a brother in law of Mr. Will. Kettenbach.

Q. Well, do you know whether Mrs. Justice was

(Testimony of Clarence W. Robnett.)

in that line? A. Yes.

Q. And do you remember anyone else?

A. Well, I think Mrs. Atkinson was in there.

Q. Who is Mrs. Atkinson?

A. A sister of Mr. Kester's. I know there were 18 of the entrymen that they had there.

Q. Well, do you know whether Mr. Bingham was there? A. Yes, he was there.

Q. And do you know whether Mr. Guy L. Wilson was there? A. Yes, he was there.

Q. And Fred. Justice?

A. I wouldn't be positive about him. I know he filed.

Q. And do you know Mr. Daniel Greenberg?

A. Yes, sir.

Q. Do you know whether he was there or not?

A. I don't know whether he was in the line-up.

Q. Now, you have said that Mr. William F. Kettenbach's wife was there; are you sure of that?

A. Yes, I seen her there in the morning, and she was among some of the claims that were to be filed on, and I think she was in the line-up.

Q. Now, do you know where these 18 people that you referred to received their filing papers?

A. From Mr. Dwyer.

Q. And do you know where Mr. Dwyer got the papers? A. He got them from me. [2002—1672]

Q. Well, how did he happen to get them from you?

A. I went to the land office and got them for him.

Q. Were you directed by anyone to get them from the land office?

(Testimony of Clarence W. Robnett.)

A. Mr. Kettenbach asked me to go up and get the papers for Mr. Dwyer.

Q. Did he say how many to get?

A. Yes; he said to get 18 sets.

Q. Do you know who was present when he told you that?

A. Mr. Dwyer and Mr. Kettenbach. He called me into the directors' room.

Q. And who did you give them to when you returned, do you know?

A. I gave them to Mr. Dwyer.

Mr. GORDON.—Now, I understand that Mr. Lambdin and Mr. Goodwin are here, and if he may be excused for a moment I will bring them in.

Mr. TANNAHILL.—All right. [2003—1673]

**[Testimony of Francis M. Goodwin, for
Complainant.]**

FRANCIS M. GOODWIN, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Francis M. Goodwin, are you?

A. I am.

Q. And in the year 1905 you were a Special Agent of the general land office, were you not, Mr. Goodwin? A. I was.

Q. Mr. Goodwin, do you know the witness here, Rowland A. Lambdin? A. Yes.

Q. Do you ever remember of taking an affidavit of him relative to his timber entry? A. I do.

(Testimony of Francis M. Goodwin.)

Q. I show you what purports to be an affidavit signed by Rowland A. Lambdin May 27th, 1905, and ask you whether that is the signature of the witness Rowland A. Lambdin? A. It is.

Q. And did he swear to that before you in your official capacity? A. He did.

Q. And is the signature of Mr. O'Fallon there?

A. It is.

Q. And was he present at the time he swore to that affidavit? A. He was present.

Q. Now, will you state the circumstances under which that affidavit was made?

Mr. TANNAHILL.—We object to that as irrelevant and immaterial, referring to something occurring outside of the presence of either of the defendants, and neither of them can be bound by anything that occurred in relation to the making of the affidavit.

WITNESS.—Would you like to have a full statement leading up to it? [2004—1674]

Mr. GORDON.—Yes.

A. As I recall the matter, Mr. O'Fallon and I went to Mr. Lambdin's house in Lewiston and asked him to give us a statement relating to his timber and stone entry, and Mr. Lambdin told us that he was not yet ready to make the same, but that he would meet us at the—what is the name of that hotel down there?

Q. The Bollinger?

A. The Bollinger Hotel, I think it was that afternoon, if he did not receive certain moneys which he was expecting from one of the defendants, and give

(Testimony of Francis M. Goodwin.)

us a complete statement as to his timber and stone claim. That afternoon Mr. Lambdin came to the hotel, Mr. O'Fallon and I met him, I don't know which one of us, and took him to the room, where we had a typewriter, and I wrote out his statement on the typewriter in his presence at that time, in response to our joint questions, Mr. Lambdin answering the questions as we asked them, and the substance was being written down at the time.

Q. And is that the paper that you prepared?

A. That is the paper that I prepared at that time.

Q. And I will ask you whether it was read over to him, or whether he read it over himself, before signing it?

A. It was read over to him; either he read it over or we read it to him, I couldn't state which. I remember we went over it carefully after we prepared it.

Q. And he signed that paper and delivered it to you?

A. He signed that paper and delivered it to us.

Said affidavit was thereupon marked by the Reporter, at the request of Mr. Gordon, as Exhibit 96, for Identification.

Mr. GORDON.—Now, if you will retire for just a moment, I will ask Mr. Lambdin a few questions. You need not go out of the room. (To Mr. Tannahill.) Do you want him to go out?

Mr. TANNAHILL.—No, I don't care about it.
[2005—1675]

[**Testimony of Rowland A. Lambdin, for
Complainant (Recalled).]**

ROWLAND A. LAMBDIN, a witness heretofore called in behalf of the complainant, and duly sworn, upon being recalled by the complainant, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Lambdin, I will read to you the affidavit that has been identified by Mr. Goodwin here, and marked Plaintiff's Exhibit 96, for Identification,—

Mr. TANNAHILL.—The defendants severally object to the reading of the affidavit in evidence, or reading it into the record in the form of a question, or otherwise, upon the ground that it is irrelevant, incompetent, and immaterial, and simply an effort to get something into the record which is incompetent and inadmissible.

Mr. GORDON.—Q. — and ask you whether or not you signed this affidavit, which reads as follows:

[**Plaintiff's Exhibit No. 96 for Identification.]**

“State of Idaho,

County of Nez Perce,—ss.

Rowland A. Lambdin, being of legal age and being first duly sworn, on his oath deposes and says:

I reside at Lewiston, Idaho. I am 30 years of age the coming August. In April, 1902, about ten days or two weeks before my application to make a timber and stone entry at the Lewiston, Idaho, land office I was approached by Samuel C. Hutchings as to my taking a timber and stone claim. Hutchings asked

me if I wanted a chance to make One Hundred Dollars; and I told him yes; and he then explained that he could take a timber and stone claim and get that sum from George H. Kester for his right; but for some reason he (Hutchins) was unable to accept the offer. Hutchins said he could make it all right with Mr. Kester so that I could also take a claim on the same terms or words to that effect. At that time I did not know the said George H. Kester [2006—1676] personally. Within a day or two Hutchins saw me again and told me to go down to the bank and see Mr. Kester; and so I went to see Mr. Kester at the time appointed at the bank. Mr. Kester was at that time cashier of the Lewiston National Bank.

I knew Mr. Kester by sight, and at the time appointed called to see him and told him who I was and that Mr. Hutchins had said that he (Kester) wanted to see me. We had a private talk together, and Mr. Kester explained to me that he wanted me to go up with William Dwyer to examine a timber claim, that all my expenses would be paid, that I was to make a timber and stone entry and he would furnish the money with which to make final proof and to pay all necessary expenses; I was then to deed the land, and was to receive One Hundred Dollars when the deed was delivered. When I left Mr. Kester he told me that when Mr. Dwyer was ready to go up to the timber belt I would be advised. In about ten days I was informed that Mr. Dwyer was ready to go up to the timber and that I was to meet him at the train the next morning, which I did. We left Lewiston about 7:30 A. M., meeting Mr. Dwyer at the train. It is my recollection that we went via the N. P. R. R.

to what was then called Vollmer but now known as Troy, a station on the said railroad. Mr. Dwyer furnished me with a ticket. From Vollmer we went to the timber by horse back, Mr. Dwyer procuring the horses. We stayed two nights in the timber. While in the timber Mr. Dwyer and I had some conversation as to the questions I should have to answer when making final proof, but I do not recall distinctly just what the conversation was. Mr. Dwyer showed me over what I understood was my claim.

I then returned to Lewiston and on the same day made my application or filing for the land. My entry was for the SW. $\frac{1}{4}$, Sec. 29, T. 42 N., R. 1 W. Before filing I went to the Lewiston National Bank and saw George H. Kester and he gave me the money to make my entry. [2007—1677] and to have the filing papers prepared, telling me just what the money was for or where it was to be paid. Mr. Kester furnished me with the exact amount of money necessary to have the filing made and papers prepared. The papers were prepared by Thomas Mullen, to the best of my recollection.

My agreement with Mr. Kester was that I should receive One Hundred Dollars when final proof should be made, but as a matter of fact I received different sums from him from time to time, so that when I came to make final proof I had received the entire sum of One Hundred Dollars from him. At one time I drew a check on the Lewiston National Bank for Thirty-five Dollars, which Mr. Kester honored.

On July 22, 1902, I offered final proof on my claim, and William Dwyer and a party who lived in the

vicinity of my claim, whose name I do not now recall, acted as witnesses. The second party was the one with whom we stopped over night while I was out with Mr. Dwyer inspecting the land.

William Dwyer arranged for the other witness to be present to act when final proof should be made.

On the day on which final proof was offered, I went into the private office or directors' room of the Lewiston Bank and George H. Kester counted out Four Hundred Dollars with which to offer final proof, to pay fees and expenses, and Twenty Dollars to pay one of the witnesses, making in all about Four Hundred and Thirty Dollars, to the best of my recollection. As near as I recall the final proof was taken about 10 o'clock in the morning. While the proof was being taken I hand the witness whose name I do not recall, Twenty dollars as his fee. Before I received the money, Mr. Kester told me to find out how much the witness wanted, and the money was given me by Mr. Kester to pay for that purpose, with the other money as above stated. Mr. Kester and I were alone in the room when the money was handed me. About an hour [2008—1678] after receiving the money from Mr. Kester, I paid over Four Hundred and some dollars of the same to the Receiver of the land office. I do not think I was out of the building after the money was handed me by Mr. Kester until I paid over the money to the Receiver of the land office.

Mr. Kester told me I should be asked by the land office officials where I got the money, to state that I had had part of the money and had borrowed part of it from the bank.

I had nothing to do with the advertising of my final proof and did not pay the bill for the same; and I do not know who did pay the bill, unless the land office included the bill in the amount I paid to the Receiver.

When I came down from the land office, after making final proof, I went into the bank and Mr. Kester asked me if I had my final receipt, and I handed it to him. Then Mr. Kester went with me across the street, to the office of the Notary Public H. K. Barnett, where I found a deed already prepared, deeding the said timber claim, which I then and there signed and acknowledged. This deed conveyed my timber claim to Geo. H. Kester and W. F. Kettenbach. After signing the deed, Mr. Kester asked me where my wife was and on being told went out and called a cab, and the Notary Public and I went out to my house where my wife also signed the deed.

In making my final proof, in answer to the question as to who located me on the claim, I stated William Dwyer, and that I paid him One Hundred Dollars for locating me; but I had no agreement or understanding with Mr. Dwyer that I should pay him anything and never did pay him anything for locating me. To the best of my recollection, Mr. Dwyer himself told me to make this statement as to his fee when offering final proof. I did not pay Mr. Dwyer anything for appearing and acting as a witness in my final proof.

At the time I signed and acknowledged the deed I did not know [2009—1679] the consideration stated in the deed, but I have since learned that the

(Testimony of Rowland A. Lambdin.)

amount stated therein was Eight Hundred Dollars.

I never had any conversation with W. F. Kettenbach as to my claim, all my arrangements being made with Mr. Kester, or Mr. Dwyer.

R. H. LAMBDIN.

Attest: S. F. O'Fallon.

Subscribed and sworn to before me this 27th day of May, 1905.

FRANCIS M. GOODWIN,

Special Agent, G. L. O. [2010—1680]

Q. I will ask you whether or not you signed and swore to that affidavit? A. I refuse to answer.

Q. On what ground?

A. On the grounds that I have heretofore stated.

Q. Well, what are they?

A. I claim my privilege.

Q. What is your privilege?

A. I am under an indictment in these same cases before the court, and I claim my privilege.

Q. Do you know what you are under indictment for?

A. I am under indictment for perjury, I suppose.

Q. In making your sworn statement in connection with this claim?

A. I refuse to answer any further questions.

Q. On what grounds do you refuse to answer any questions? A. I have stated it once.

Q. Now, state the grounds on which you decline to answer the question.

A. I said I am under an indictment in the same case as is up here, and therefore I claim my privilege

(Testimony of Rowland A. Lambdin.)

and refuse to answer any questions.

Q. And are you swearing that you are under indictment, Mr. Lambdin?

A. As far as I know I am under an indictment, yes, sir. I have no reason to think otherwise.

Q. Are you under bond?

A. Well, I don't know as I am.

Q. You never have been under bond?

A. Not that I know of.

Mr. GORDON.—I will ask to have that matter certified to the court. Will you be down here tomorrow morning at ten o'clock, Mr. Lambdin?

WITNESS.—Yes, sir. [2011—1681]

**[Testimony of Francis M. Goodwin, for
Complainant (Recalled).]**

FRANCIS M. GOODWIN, a witness heretofore called by the complainant, and duly sworn, being recalled by the complainant, testified as follows. to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Goodwin, I failed to ask you whether or not you are still in the Government employ?

A. I am not. Q. You are not?

A. I am not.

Q. And in what are you engaged—in the practice of your profession?

A. In the practice of law, yes, sir.

Q. In Spokane? A. In Spokane, yes, sir.

Q. Mr. Goodwin, do you know Mrs. Frances A. Justice, now Mrs. Clausen?

(Testimony of Francis M. Goodwin.)

A. I know Mrs. Frances A. Justice; I don't know her present name.

Q. Do you remember of going to see her relative to her transactions in taking up a timber claim?

A. I do.

Q. And do you remember the occasion of getting an affidavit from her relative to her timber claim?

A. I do.

Q. And I will ask you whether Mr. Samuel F. O'Fallon was with you at that time?

A. He was.

Q. And where did you go to see her?

A. At her home in Clarkston, Washington.

Q. I will ask you, Mr. Goodwin, if you went to Mrs. Justice's home in company with Mr. O'Fallon and asked her if she was alone, and [2012—1682] said that you were sent there by the Government to get a deposition from her, and whether or not you looked through all the rooms in the house to see whether there was anyone in the house that could hear what you said? A. I did not.

Mr. TANNAHILL.—We object to that as irrelevant and immaterial, and an attempt to contradict or impeach his own witness.

WITNESS.—I did not.

Mr. GORDON.—Q. Did Mr. O'Fallon?

A. He did not.

Q. Were you present all the time with Mr. O'Fallon while you were there? A. I was.

Q. Did Mr. O'Fallon say to Mrs. Justice: "Look out, Mrs. Justice, you are evading the truth"; "We

(Testimony of Francis M. Goodwin.)

know just how that was, and you are not telling it as it was''?

A. I don't recall any such conversation.

Q. And then did either of you state how the transaction was carried on? A. We did not.

Q. I will ask you if either you or Mr. O'Fallon threatened Mrs. Justice in any way?

A. We did not.

Q. Did you intimidate her or attempt to intimidate her in any way? A. We did not.

Q. I show you a paper marked Plaintiff's Exhibit 35, and which purports to be an affidavit made by Frances A. Justice before Francis M. Goodwin, Special Agent of the general land office, and ask you to look at that and state whether or not that is Mrs. Justice's signature to that paper, and whether or not it was sworn to before you in the [2013—1683] presence of Mr. O'Fallon.

A. This is her signature, and it was sworn to before me in the presence of Mr. O'Fallon.

Q. Now, will you state the circumstances of obtaining that affidavit?

Mr. TANNAHILL.—We object to that as immaterial and irrelevant.

WITNESS.—Mr. O'Fallon and I had called at Mrs. Justice's home several times and not found her in. One afternoon we went over there and found her on her front porch, and explained to her who we were, and she said she understood that we had been over there to see her and she was expecting us to come again. We told her what we wanted, and she

(Testimony of Francis M. Goodwin.)

said that she had seen in the newspapers that these cases were being investigated, and then we proceeded to ask her questions as to her timber and stone entry, which she answered. After we had gone over the matter fully we asked her if she was willing to have a statement made in writing to that effect. She said she was. We then went into her house, and I prepared this statement, and she signed it.

Mr. GORDON.—Q. Did she read it over before she signed it?

A. No; I think I read it over to her. She was looking over as I read it.

Q. Did she sign it voluntarily? A. She did.

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Q. And are the statements contained here the exact statements that she made to you, Mr. Goodwin? A. They are.

Q. Is this the only statement that you ever took from Mrs. Justice that she signed?

A. I don't recall any other. I think we had statements of hers taken at Moscow, in one of the trials, which she read over afterwards [2014—1684] with us at Moscow, but none that we ever wrote down ourselves.

Q. I will ask you to read in there, Mr. Goodwin, "The location fee I paid William Dwyer was returned to me by Mr. Dwyer. I did not give him a note for the money." Did Mrs. Justice make that statement to you, that "The location fee I paid William Dwyer was returned to me by Mr. Dwyer"?

(Testimony of Francis M. Goodwin.)

Mr. TANNAHILL.—We object to that as irrelevant and immaterial, and an attempt to impeach his own witness.

WITNESS.—She did.

Mr. GORDON.—Q. Read that, will you, “I signed what I understood was a contract, that is, an instrument in writing, conveying the land I proved up on to the Kester & Kettenbach in the bank, the same day I made final proof and after making final proof. Just after I signed the instrument in writing spoken of William Dwyer handed me \$150.00 in cash.” Now, stop right there. Did she tell you that she had conveyed the land to Kester and Kettenbach, as stated in there? A. She did.

Q. Now, then, this sentence in the affidavit, later on, after the other: “Before going out to examine the land I had a talk with Mr. Dwyer and told him I would take a claim if I knew where I could sell it when I proved up. He said he thought he knew where he could find a purchaser, and he told me these parties would not pay over \$150.00 and the expenses of the location. I went up to examine the claim with the intention of selling or disposing of my claim to the purchaser spoken of by Mr. Dwyer.” Did she make that statement to you and Mr. O’Fallon?

A. She did.

Q. (Continuing:) “I understood the instrument in writing above spoken of was a contract or agreement that I would execute a deed for the land when I should get my patent, as I did not think I could execute a deed until I received my patent.” Did

(Testimony of Francis M. Goodwin.)

Mrs. Justice make that statement [2015—1685] to you and Mr. O'Fallon? A. She did.

Q. Were you in the room when Edward Lewis was making a statement—Edward M. Lewis?

A. Yes, I think I was.

Q. Did you threaten any witness, Mr. Goodwin? Did you threaten him with the penitentiary, or a little place across the way, if he didn't tell matters the way you wanted him to?

A. I certainly did not.

Q. Did you hear anybody else make any such a threat? A. No, sir.

Cross-examination.

(By Mr. TANNAHILL.)

Q. You was in the room a good deal of the time when O'Fallon was talking to the witnesses, wasn't you? A. I was.

Q. Now, did you say you never heard O'Fallon threaten any witness?

A. I never heard him threaten a witness.

Q. You never heard him threaten to take them before the grand jury and indict them?

A. No. I have heard him say he would take them before the grand jury, but I never heard him say he would indict them.

Q. Now, didn't you hear him tell Hy. Lewis, in the presence of Ed. Lewis, that there was a little room over here where they would take care of him if he didn't answer the questions? A. No, sir.

Q. You never heard that at all? A. No, sir.

Q. Now, in making your examination, in taking

(Testimony of Francis M. Goodwin.)

statements of different witnesses you usually told them how you heard the transaction occurred, didn't you? [2016—1686] A. No, sir.

Q. You didn't do that? A. No, sir.

Q. Now, didn't you hear Mr. O'Fallon tell Mrs. Justice that she was evading the truth on several different occasions?

A. I might have heard him say that after this original statement was taken at Moscow.

Q. Well, didn't you hear him tell her that at the time this original statement was taken, and before that? A. I did not.

Q. But you do remember hearing him tell her that she was evading the truth, over at Moscow?

A. I think he made some such statement as that to her on one or two occasions, that she was seeking to evade the truth.

Q. And he tried to pin her down to that affidavit?

A. I don't know what his object was.

Q. Didn't you hear him tell her a number of times that she was evading the truth?

A. No, sir, I didn't.

Q. And you didn't hear him tell her how it was that the transaction had occurred? A. No.

Q. Now, who was with Mrs. Justice at the time you and O'Fallon went to her home?

A. No one that I know of.

Q. When did you find out that no one was there?

A. After we had seen her.

Q. How did you find it out then?

A. Simply because no one appeared where we

(Testimony of Francis M. Goodwin.)

were, and I saw no one in the house.

Q. You and O'Fallon didn't look in any of the rooms?

A. No, sir, only the one room where we took the statement, that was all. [2017—1687]

Q. And you looked in the room, did you?

A. We couldn't help looking in it; we were occupying it.

Q. Now, you say that Lambdin told you that if he didn't get some money from the defendants that evening that he would give you a statement; is that right? A. Yes, sir.

Q. Which one of the defendants did he say he was expecting that money from?

A. I think it was William F. Kettenbach.

Q. Did he tell you how much money he had demanded of him? A. He did.

Q. How much?

A. I don't recall the amount. I think it was \$75.00, but I am not sure.

Q. Well, did he tell you that he had written to tell them that if they didn't give him that money that he would make a statement for you and O'Fallon?

A. He told us that afterwards; he didn't at that time.

Q. And did he tell you that he had drawn up a complaint, or had Clay McNamee draw up a complaint, and mail it to them, and tell them that that complaint would be filed in the District Court if they didn't come through with so much money?

A. Not at that time. He told us that after he had

(Testimony of Francis M. Goodwin.)

made the statement, and also exhibited to us a letter he had sent to Mr. Kettenbach, after we had taken his statement.

Q. But he told you that if they didn't come through with that money before night, he would then make that statement?

A. His language was, as near as I can remember it, that he was expecting some money from Mr. William F. Kettenbach, and that if he didn't receive it at the time he was expecting it he would come back and make a complete statement, and he came in and told us that he hadn't received the money and was ready to make the statement.

An adjournment was thereupon taken until ten o'clock to-morrow morning. [2018—1688]

On Thursday, September 15th, 1910, at ten o'clock A. M., the hearing was resumed.

**[Testimony of C. W. Robnett, for Complainant
(Recalled).]**

C. W. ROBNETT, recalled for further direct examination, testified as follows:

Q. Mr. Robnett, do you know Mr. Fred Emory?

A. I do.

Q. And do you know Mr. C. W. Colby?

A. Yes, sir.

Q. Do you know whether they were connected in business in any way? A. They were.

Q. Were you at any time at a conference or conversation in which either of these parties and the defendants conversed relative to any timber transactions? A. I was.

(Testimony of C. W. Robnett.)

Q. Now, when was that?

A. Why, along in the latter part of the spring or early summer of 1903.

Q. Now, state what you can relative to that conversation, where it was and who were the parties to it.

A. The first conversation took place between Mr. Colby and Mr. Kester.

Q. Where was this?

A. This was in the main body of the bank, the main body of the working room of the bank, at Mr. Kester's desk. Mr. Colby came into Mr. Kettenbach's private office and around to Mr. Kester's desk, where he was sitting, and pulled a chair up there and sat down right beside him. He says, "George, I come in to talk to you in regards to the timber matters." He says, "Fred Emory last winter cruised out some claims in 39—3, and we located six men on them this spring, and [2019—1689] we are to furnish them with money and all expenses to prove up, and are to pay them \$200.00 for their right. Now, we have fallen down on being able to get this money, and wanted to know if you can go ahead and take this up under the same arrangement and take care of these parties."

Q. What were the entrymen to do? Was anything said about that?

A. The entrymen were to go ahead and prove up and deed the claims over to Colby and Emory for \$200.00 each.

Q. Was anything said about, if Kester furnished

(Testimony of C. W. Robnett.)

the money, what was to be done with the claims?

Mr. TANNAHILL.—We object to that as leading and suggestive.

A. The claims were to be deeded over, Mr. Colby said, if Mr. Kester and Kettenbach went in and took care of the entrymen under the same conditions and terms that they had with them, that they would deed the claims over to them after proof, and they were to receive \$200.00 per claim. Mr. Kester says, “Well, I will take it up with Mr. Kettenbach when he comes in and will let you know later.” He says—

Q. Wait a minute. Will you try to repeat what you said about what Mr. Colby told him about having entered some people on claims the preceding winter, told Kester?

A. He says, “George, Fred Emory cruised out some timber last winter in 39—3, and we have located six parties on that timber with the understanding that we were to take care of them and pay their expenses and give them \$200.00, and them deed the claims over to us after proof.”

Q. And was anything said whether or not there was any relationship between these entrymen and Emory and Colby?

Mr. TANNAHILL.—We object to that as leading and suggestive, and prompting the witness from the testimony given in the trial of Kester, Kettenbach and Dwyer, which Mr. Gordon is now holding in his hand and [2020—1690] referring to in asking the questions of the witness. I don’t think it is fair, Mr. Gordon.

(Testimony of C. W. Robnett.)

Mr. GORDON.—I submit that that isn't leading.

Mr. TANNAHILL.—It certainly is; it is simply calling his attention to some parts of the evidence that he gave in a criminal case, and that isn't fair.

Mr. GORDON.—Answer the question.

A. Nothing more than the understanding and—

Q. No, I don't mean that. I mean did he say who these people were, without giving their names?

Mr. TANNAHILL.—The same objection.

A. No; he stated, there were six men; I don't know at that time whether he stated who they were or not, but at a conversation later on he made that—

Mr. GORDON.—Q. Do you know whether or not anything was said as to by whom these entrymen had been employed?

Mr. TANNAHILL.—We object to that on the same ground; it is an effort to lead the witness and in fact tell the witness what to swear to, and leading and suggestive.

Mr. GORDON.—Answer the question.

WITNESS.—What was the question?

The last question was thereupon repeated by the Reporter.

A. They had been obtained by Mr. Emory.

Mr. GORDON.—Q. I don't mean to take up timber claims. Do you know where they were working?

Mr. TANNAHILL.—The same objection.

A. Yes, some of them had been working for them and they knew they were all right—working for them in the timber. [2021—1691]

Mr. GORDON.—Q. Now, what else was said in

(Testimony of C. W. Robnett.)

that conversation?

A. Mr. Kester told him he would take the matter up with Mr. Kettenbach as soon as he came in, and would let him know just what they would do, and he also asked him, "Are you sure that Fred knows all about these claims?" And Mr. Colby says, "Yes, he does, and you know that Fred is well posted on timber," and George says, "Yes," and he says, "You come in this evening or tomorrow and I will let you know what we will do; I will take it up with Mr. Kettenbach." When Mr. Kettenbach came in Mr. Kester went into his office and says, "Will, Mr. Colby was in here to see me about us taking up six claims in 39—3 that was located by Fred Emory and cruised out by him last winter which he claims are all right. They are to pay the entrymen \$200.00 a claim. Now, what do you think about it? Do you think we want to go into that township and take up those six claims?"

Q. Go ahead.

A. And Will asked George about what the claims would run, and George told him that he thought they would go somewhere in the neighborhood of between two and three million; it was second growth timber in there. But, he says, "We will take the matter up with Mr. Dwyer and see what he thinks about that timber, and also we will have Mr. Emory come down and ask him about it, and Mr. Colby will be in this afternoon or to-morrow morning to get our answer." And Will said, "Well, if you think it is all right and the timber is all right, I am perfectly willing for us

(Testimony of C. W. Robnett.)

to go ahead with it."

Q. Do you know anything else further relative to those transactions?

A. I think it was the next morning that Mr. Colby and Mr. Emory came into the office, and they talked the matter over, and Mr. Emory told him that he checked those claims over and he knew they were the [2022—1692] best claims in that whole township that was subject to filing. And Mr. Kester told Mr. Colby that they would go ahead and furnish the money for the proof and take the claims under the same conditions that they had with the entrymen, to pay them \$200.00 for their right.

Q. Now, do you know of anything further that was said at that conversation?

A. The names of the entrymen was spoken of.

Q. By whom?

A. By Mr. Kettenbach; he asked either Mr. Colby or Mr. Emery the names of the entrymen and he gave them to him.

Q. Do you remember anything else that was said at that time?

A. No, not at present, with the exception that when the time came for them to come in, Mr. Kester told Mr. Colby to come in when the time came for the proof and he would give them the money.

Q. State anything else that you know, now, relative to that transaction.

A. Well, at the time for the proof Mr. Colby came into the office, Mr. Will Kettenbach's private office,

(Testimony of C. W. Robnett.)

and had a talk with George Kester, and he called me in—

Mr. TANNAHILL.—The defendants desire to interpose an objection as to any conversations had between any of these parties relative to the final proof, or the making of final proof, and would ask that this objection go to all this line of testimony without the necessity of repeating it after each question.

The SPECIAL EXAMINER.—Yes; that may be understood.

WITNESS.— —and told me to bring in some money—I think it was \$2,400.00 or \$2,500.00 in currency—and make a cash item in the cash for the money, which I did.

Q. Now, when was this?

A. It was the time these entrymen were to make their proof. [2023—1693]

Q. Who was present at that time?

A. Mr. Colby, Mr. Kester and myself.

Q. Where was this?

A. In Mr. Kettenbach's private office.

Q. Was anything said at any of these conversations as to when the arrangement you have referred to was made with the entrymen?

A. Prior to the time of the filing. Mr. Colby stated that Mr. Emory cruised the timber out and then got these parties to file under that agreement.

Q. Did you see any one about the bank relative to these transactions, the day of final proof, other than those you have named?

(Testimony of C. W. Robnett.)

A. Yes, there was two of the entrymen was outside on the sidewalk of Mr. Kettenbach's private office. I think it was Mr. Evans, and the other party I don't recall just now.

Q. Did you say a while ago that in one of these conversations the names of the entrymen were given?

A. Yes, sir.

Q. Did you name them?

A. No, I didn't name them.

Q. At which conversation was it?

A. It was in Mr. Kettenbach's private office, at the time that Fred Emory and Mr. Colby and Mr. Kettenbach and Mr. Kester were having a talk.

Q. And that was the second conversation?

A. That was the third,—no, it was the second conversation.

Q. Who were those entrymen that were mentioned?

A. Why, Mr. Evans and Lon. Bishop, Mr. Chute.

Q. Do you know his first name?

A. No. And Mr. Smith.

Q. Do you know his first name?

A. Charles Smith. [2024—1694]

Q. Who else? A. And Mr. Dent.

Q. What was his first name?

A. I don't know; I don't recall the other entrymen.

Q. Mr. Robnett, do you know of any instances in which either Kester or Kettenbach furnished any entryman money for any part of the expenses in taking up a claim, other than you have related?

A. Yes, they—well, I don't know whether—they

(Testimony of C. W. Robnett.)

furnished most of the expenses for almost every one of them that came down to that line-up. I don't know whether you mean any individual entry outside of that line-up. I don't know just what you mean.

Q. Well, do you know of any money that was furnished to any of the entrymen for the payment of location fees?

A. Yes, there was; you take the Jackson O'Keefe entrymen there, money was handed out to one and passed around back to Bill Dwyer and then out again.

Q. What was that transaction?

A. That was a hundred dollar bill.

Q. Now, what do you know about that hundred dollar bill?

A. I know it was kept there in the cash for quite a while for that purpose.

Q. For what purpose was it kept?

A. To be handed out to the entrymen and around and to be handed to Mr. Dwyer, and then brought back to the bank to be utilized when it was needed, just for show.

Q. Now, do you know of any conversation ever had in the bank relative to that hundred dollar bill?

A. Yes, there was a conversation in the bank took place between Mr. Dwyer, and I believe between Mr. Kettenbach, either Mr. Kettenbach or Mr. Kester, in regards to the hundred dollar bill, asking him about [2025—1695] how he got his location fee paid. He says, "Well, they paid, a certain number, and it is back in the bank to-night."

Q. Do you know how long that hundred dollar bill

(Testimony of C. W. Robnett.)

was used for that purpose? A. Several months.

Q. Now, you spoke of the Mary Harris claim yesterday that you called your claim? A. Yes.

Q. And you had tried to arrange with Mr. Goldsmith to leave that out of the State selections?

A. Yes, sir.

Q. I will ask you if you remember whether that claim was ever contested?

A. Yes; it was in the first list of claims that was filed at the request of Mr. Goldsmith.

Q. I asked you if you remember whether there was a contest filed against that claim.

A. You mean by the State? A. By anybody.

A. Well, no; the contest,—Mrs. Harris and myself had offered our homestead filings, and they were rejected at this time, but later on Ralph Chapman contested Mrs. Harris'.

Q. Were you interested in that?

A. I wasn't interested in the contest, no; I withdrew.

Q. Why did you withdraw?

Mr. TANNAHILL.—We object to that as leading and suggestive and immaterial.

A. One of the reasons I got out of it was that Mr. Kester told me he thought I had better drop it on account it was going to bring up a certain amount of notoriety, and Mr. O'Fallon was there, and it would create an investigation of the timber matters and would bring them into [2026—1696] it, and he thought it was best to drop out, and I did so.

(Testimony of C. W. Robnett.)

Q. Did you ever talk to anybody else about that contest?

A. I talked to Mr. Kettenbach, and told him what I was going to do and he said he thought it would be a good thing, too. He wanted to know if I had spoken to Mr. Kester about it, and I told him yes, that George had advised me to, too, and he said "All right, go ahead and drop out and keep out of any trouble."

Q. Do you know a Carrie D. Maris, now Mrs. Rexford? A. I do.

Q. I will ask you if you ever had any negotiations or arrangements with her relative to taking up a timber claim? A. I did.

Q. Now, state what it was.

A. I went into the,—she was working in Mr. Volmer's Baum's store, and I went in and seen her and asked her if she wanted to take up a timber claim, and she said she did, but had no money or means of carrying it through, and I told her that I would tend to that if she wanted to take up a timber claim, and I would see that she got a good claim, and she said, "All right," and I says, "When can you go into the timber," and she says, "Almost any time, but I would like to have it along in about five or six days from that time," and I told her that could be arranged, if she wanted to go, and I told her I would pay all the expenses and the location fee, and that when the claim was proved up on and sold that we would divide whatever the profits was in the claim.

(Testimony of C. W. Robnett.)

Q. Was that all?

A. So I seen Charlie Jansen, and he—

Q. Wait a minute. Before you get to that, when you told her that, what did Miss Maris say?

A. She said that was all right; said it was perfectly satisfactory to her. [2027—1697]

Q. Now, what was said about selling this property?

A. That I was to handle it and sell it and pull out one-half of the profits, whatever was made out of the claim, each one of us would take; we would divide the profits equal, after deducting all expenses.

Q. Now, tell all that you can remember about that transaction.

A. Well, I made arrangements with Charlie Jansen to take her up close to Pierce and locate her on a claim, and she came back and I gave her the money for filing, and she filed, and I also gave her the money for final proof, and then I had her sign a mortgage to Mrs. Sullivan, for the money for the proof, \$400.00 or \$500.00, I have forgotten now which it was; then I had a deal on to sell the claim to Joe Molloy, but Mr. Kester said he wanted the claim, and I told him all right, and sold it to Mr. Kester for \$1,600.00.

Q. Did Mr. Kester know anything about the arrangements you had with Miss Maris?

A. Yes, he knew all about that.

Q. How do you know that?

A. From conversations relative to the timber transactions.

Q. And did you let him have that in accordance with your arrangements you had with him?

(Testimony of C. W. Robnett.)

Mr. TANNAHILL.—We object to that as leading and suggestive, and calling for the conclusion of the witness and not a statement of a fact.

A. Yes.

Mr. GORDON.—Q. Do you remember how much you gave Mrs. Rexford for her share of the profits of this?

A. Why, I advanced her money from time to time, and so the last time she asked me for money she said if I would give her that, that she would consider that a cancellation of all her rights to the claim. It went to my mind that I gave her somewheres around \$170.00, all told. [2028—1698]

Q. Was that before you sold or after you sold?

A. That was before I sold.

Q. Do you know a John H. Little? A. I do.

Q. Did you have any negotiations with him relative to taking up a timber claim? A. I did.

Q. Now, state what that was.

A. We had a number of claims up there—

Q. Where?

A. Township 39—3, that Mr. Knight and Mr. Benton had cruised out.

Q. Who is Mr. Benton? What is his name?

A. W. B.

Q. And is he the son of Joel Benton?

A. Joel H. Benton; yes.

Q. Are they any relation to William F. Kettenbach?

A. Joel H. Benton is an uncle of Mr. Kettenbach, and W. B. Benton is a son of Joel H. Benton, making

(Testimony of C. W. Robnett.)

him a cousin of W. F. Kettenbach.

Q. Was the relationship through Mr. Kettenbach or Mrs. Kettenbach? A. Mrs. Kettenbach.

Q. Now, state the transactions with Mr. Little.

A. I seen Mr. Little and told him that he had a number of claims up there that I was locating people on, and wanted to know if he didn't want to take up a claim, and he said that he did, but he hadn't the money to go ahead, and I told him I would arrange for that, and also to pay the expenses, and that I had deals on for the disposing of the timber, and that I could get him from \$150.00 to \$200.00 out of the claim.

Q. Now, when was this you had this conversation with him relative to entering the claim? [2029—1699] A. That was along in the spring of 1903.

Q. I say, relative to the time of entering the claim.

A. It was prior to the time he filed.

Q. Did he say anything about it at that time?

A. He said it was all right; that as soon as he could get away from the store, when there was a crowd going up, he would go up.

Q. State all that happened.

A. He went on up to the timber, came back and filed, and gave his note for the location fee.

Q. How much was that?

A. A hundred and twenty-five dollars, either \$125.00 or \$150.00. There was two different location fees that was charged there at different times.

Q. Now, do you know who furnished the expenses going to the timber, and for the filing for Mr. Little?

(Testimony of C. W. Robnett.)

A. My recollection is that that was furnished by Curtis Thatcher at that time, as he agreed to make a number of loans on claims, ten in number.

Q. Now, before you get to that, you said that you told Mr. Little that you had a deal on that you could sell his claim. Was anything said at that time as to what he would get for it, or what was the arrangement relative to that, if any?

A. Why, that I would get him either \$200.00 or \$250.00 for his right, that would be what he would make out of it if the deal went through. If it didn't, I thought there was other deals whereby I thought I could handle it and get him that amount of money.

Q. Did you get any money from Curtis Thatcher for Mr. Little?

A. Yes, he advanced the money for the location fee, and advanced the money for a number of them.

Q. I am speaking now about the Little claim.

A. I couldn't say positively, but I think he did, that he advanced [2030—1700] the money to go up into the timber and also for the location fee; I know he advanced the money for the location fee, took up Johnny Little's note.

Q. As I understood, you furnished the money for him, did you not? A. Yes.

Q. And you took a mortgage. Do you remember to whom that mortgage was?

A. Why, the mortgage was made to me.

Q. And do you remember what you did with the mortgage and the note secured by it?

A. I turned the mortgage over to Mr. Kettenbach

(Testimony of C. W. Robnett.)

and assigned the note to him without recourse.

Q. When was that, relative to the time that you took the note? A. The same day.

Q. When was the note taken?

A. Right after proof.

Q. Right after final proof? A. Yes, final proof.

Q. Now, what became of that claim, do you know?

A. It was finally deeded to Mr. Kettenbach.

Q. Do you remember the transaction in connection with that, the conversation relative to it?

A. Why, the deals failed to go through that I had at the time of the location, and, of course, the mortgage came due, and Mr. Kettenbach told Mr. Little that he would have to either pay the mortgage or deed the claim, and he deeded the claim.

Q. Now, did either Mr. Kettenbach or Mr. Kester know of the arrangement that you had with Mr. Little? A. They did.

Q. How did they know that?

A. From conversations with both of them.
[2031—1701]

Q. Who had the conversations with them?

A. I had the conversations with both of them, and I told Mr. Kettenbach about the condition of the claims at the time he agreed to take them over.

Q. Do you know, or did you know, a Wren Pierce?

A. Yes, sir.

Q. Who was he?

A. He was an entryman that filed on a claim in 39-3.

Q. What was his business?

(Testimony of C. W. Robnett.)

A. He was either a carpenter or a painter, I don't know which.

Q. Was he just a transient there in Lewiston?

A. Yes; he went away right after he made his proof.

Q. How long had he been there, do you know?

A. Something like six months.

Q. Did you have any transaction with him relative to a timber claim? A. I did.

Q. Now, state what it was.

A. He was brought to me by Mr. Varney, Arthur Varney, and I explained to him the conditions under which I could furnish him a claim to file on, and he stated that he would be willing to go ahead and file on a claim for \$200.00 for his right, and I told him I had some deals on at that time, and explained the details.

Q. You said that you explained to him the conditions under which you would furnish him a claim. You didn't say what the conditions were.

A. The conditions were that he was to go ahead and go up and see the claim, and file, and prove up on it, and I was to furnish the money for him.

Q. Furnish what money for him?

A. The money necessary to pay expenses and final proof, and then to sell the claim for him, and give him \$200.00. He went ahead and filed on the claim, proved up on it, and the day he made proof Mr. [2032—1702] Kettenbach bought the claim.

Q. Do you remember whether you took a mortgage on that claim or not?

(Testimony of C. W. Robnett.)

A. No; he sold out. There was three of them that was sold outright, and he was one of them.

Q. Who were the other two?

A. Morrison and—

Q. Now, do you know whether or not you are mistaken in that statement that no mortgage was taken from Wren Pierce?

A. No; I don't think so; I don't know—

Q. Do you remember where you got the money for him to pay his location fee?

A. Why, he give his note, and I took it over and turned it over to Curtis Thatcher, and he advanced the money.

Q. Do you remember where you got the money to make final proof with?

A. I took it from the bank there, and after the proof the claim was,—instead of him giving a mortgage he deeded it, that is my recollection. Now, there was three out of eleven that deeded the claims without giving a mortgage.

Q. There was two out of three—

A. There was two then and one later on, that sold later on, without giving mortgages; Morrison was one of them.

Q. George Morrison?

A. George Morrison was one of them, and it is in my mind that Wren Pierce is the other.

Q. Who were the three that you refer to? Do you refer to Clute? Was he one of them? A. No.

Q. You say there was two out of three—

A. There was eleven claims all told, and certain

(Testimony of C. W. Robnett.)

ones of them gave [2033—1703] mortgages, and the other two deeded direct and Mr. Kettenbach paid them \$200.00 a claim.

Q. And the others gave mortgages?

A. Yes; George W. Morrison and Wren Pierce; that is my recollection.

Q. And was Clute of that bunch?

A. No, Clute wasn't in that bunch; it had nothing to do with Clute.

Q. Did you negotiate the sale to Mr. Kettenbach?

A. I did.

Q. And did he know about your arrangement with— A. Yes, sir.

Q. — Pierce? A. Yes.

Q. How do you know that?

A. I told him all about it.

Q. Do you know Benjamin F. Bashor?

A. I do.

Q. Do you know whether or not he took up a timber claim? A. He did.

Q. Do you know,—state what you know about his taking up a timber claim.

A. Why, he was the assessor of Nez Perce County, and I called him up over the phone and I told him the next time he came down town to come into the bank to see me, and he came into the bank, and I told him that if he wanted to take up a timber claim that I could furnish him one, and he said he didn't have the money, and I told him I would go ahead and arrange for the money for the final proof, and he says, "All right then I will go ahead and take a claim." He

(Testimony of C. W. Robnett.)

wanted to know how much he would get out of it, and I told him I would get him \$200.00 or \$250.00.

Q. Was anything further said at that time as to what was to be done with the claim?

A. Why, I was to have the selling of the claim, and all above the [2034—1704] \$250.00, whatever I sold the claim for, I was to have; he would sell it for the \$200.00 or \$250.00.

Q. That was the arrangement you had with him prior to his ever going to view the claim? A. Yes.

Q. Did he accept the proposition?

A. He accepted it.

Q. What happened next?

A. He went up into the timber and came back and filed.

Q. Who furnished him the money, if you remember?

A. I think he furnished his own money to go up to see the claim.

Q. Who furnished the money for the location?

A. Why, he gave his note for it.

Q. Who furnished the final proof money?

A. Mr. Kettenbach.

Q. Was a note taken for that? A. There was.

Q. Do you know whether a mortgage was given or not? A. There was.

Q. Do you know to whom the mortgage ran?

A. To me.

Q. And the note to you also? A. Yes.

Q. Have you any remembrance of what the amount of that note was? A. \$725.00, I think.

(Testimony of C. W. Robnett.)

Q. Was it one note or two notes?

A. That was one note.

Q. When was that note given, do you remember?

A. Right after final proof.

Q. What did you do with that note? [2035—
1705]

A. I took it in and endorsed it over to Mr. Kettenbach.

Q. The same day you got it? A. Yes.

Q. Were you liable on that note at all?

A. No; without recourse.

Q. Was the mortgage assigned? A. It wasn't.

Q. Were any of these mortgages that you took in your name and transferred the notes to Mr. Kettenbach, were the mortgages assigned? A. No, sir.

Q. Did you negotiate the sale of this land?

A. I did.

Q. Now, state what you remember about that.

A. It was some time afterwards, and I seen Mr. Bashor,—I wrote him,—he was up at Peck then, and I wrote him to come down and see what he would do in regards to his claim, and I made him an offer of so much money for Mr. Kettenbach and he accepted it, and deeded the claim over to Mr. Kettenbach.

Q. Do you know Mr. Francis M. Long?

A. I do.

Q. I will ask you whether or not Mr. Kettenbach knew the conditions under which you were dealing with Mr. Bashor? A. He did.

Q. How did he know that?

A. By my telling him.

(Testimony of C. W. Robnett.)

Q. Did you tell him,—when did you tell him this?

A. Why, at the time of the location, and also at the time I spoke to him about loaning the money.

Q. For final proof?

A. For final proof. [2036—1706]

Q. Now, state what you know about Francis M. Long and who he is.

A. Francis M. Long lived at Lewiston at that time; he lives now out in the country.

Q. Was he an old man or a young man?

A. Well, I don't know the given names of the old gentleman or the son; there was two boys and the old gentleman; I don't know which is which.

Q. There is Francis M. Long, John H. Long, and Benjamin F. Long. Do you know which is the father and which the sons?

A. Mr. John Long is one of the boys, and the other boy and the old gentleman I don't know which—

Q. Did you have any arrangement with either one or all of these persons I have named, Francis M. Long, John H. Long, and Benjamin F. Long, relative to their taking up a timber claim? A. I did.

Q. Where was it and when was it?

A. I first spoke to John Long on the street and told him that I had timber claims to locate people on, and that if he wanted to go ahead and file that I could get him \$200.00 out of his claim.

Q. That was John H. Long, was it?

A. Yes; and he says, "All right, I will think it over, and I think my father and brother want to locate also."

(Testimony of C. W. Robnett.)

Q. Was anything said about the expenses at that time?

A. No; he said he would speak to his father and brother, and they would all come down to the bank. The three of them came down to the bank to see me one afternoon.

Q. State what happened there. That was his father and brother, Benjamin F. and F. M. Long?

A. Yes.

Q. You don't know which was father and brother from the names?

A. No, not from the names. [2037—1707]

Q. All right. Now, what happened then?

A. We discussed the—

Q. You say they came to the bank?

A. They came to the bank and I went over the whole matter with them, and told them where the timber was, and that the locators would take them out and show them the claims, and when they came back they could go to the land office and file, and after they filed they were to give a location fee, or give a note for it, and when the time of final proof came, this deal was holding fire for some time, why, they could give me a mortgage, the arrangements had been made for the money to be advanced to pay for the location fee and the proof money, and I would get them \$200.00 out of their claims.

Q. What did they say?

A. They said it was satisfactory, and they went up to the timber and came back and filed, proved up, and made a mortgage, gave mortgages to me for

(Testimony of C. W. Robnett.)

\$725.00 or \$750.00, and I endorsed the notes over to Mr. Kettenbach.

Q. When was that, that you endorsed the notes over?

A. The same day I took the mortgages.

Q. Did Mr. Kettenbach know anything about the arrangement you had with these entrymen before they filed on the land? A. He did.

Q. When did he learn that?

A. The same time that I approached him to make a loan on the timber claims, and also at other conversations we had relative to the timber that I was locating.

Q. Did you afterwards negotiate a sale of these three claims with Mr. William F. Kettenbach?

A. Why, I assisted in getting the boys to come into the bank and give Mr. Kettenbach a deed.
[2038—1708]

Q. Were you liable on the note that you endorsed to Mr. Kettenbach?

A. No, sir; without recourse. I endorsed all those notes without recourse.

Q. Did you assign the mortgages that the Longs gave you? A. No, sir.

Q. Do you know Bertsel H. Ferris? A. I do.

Q. Where did he reside in—

A. Lewiston, Idaho.

Q. Do you know when he first came to Lewiston, —as well as you can remember?

A. Why, he had been there some little time; I don't know just how long.

(Testimony of C. W. Robnett.)

Q. Well, now, did you have any transaction with him relative to taking up a timber claim?

A. I did.

Q. Before he took up his claim? A. I did.

Q. I wish you would state what—

A. I approached him on the street and asked him if he wanted to take up a timber claim, and he said he did, but he had no money to pay the expenses and filing on the land; I told him I had arrangements made whereby I could get the money and I would sell the claim later for him and get him a couple of hundred dollars out of it.

Q. Was anything said about what he was to do with his claim, at that time?

A. He was to deed it over to whoever I negotiated a sale with, and he was to receive \$200.00 for his right.

Q. I will ask you whether or not he accepted that proposition? A. He did.

Q. Did you furnish him the money for his expenses, and so forth? [2039—1709]

A. I wouldn't be positive whether I furnished the money for his expenses to the timber; I took his note for the location.

Q. And did you furnish him his final proof money?

A. I did, and took a note and a mortgage.

Q. When did you take this note and mortgage?

A. The day of his proof.

Q. Did you take the final receipts of these persons you have named also?

(Testimony of C. W. Robnett.)

A. I did, yes, sir.

Q. At the same time you took the notes?

A. Yes, sir.

Q. What did you do with this note and receiver's receipt of Ferris'?

A. I turned it over to Mr. Kettenbach.

Q. Was the note endorsed?

A. I endorsed it without recourse.

Q. Did you assign the mortgage?

A. I didn't; I surrendered the mortgage, I didn't assign it.

Q. Now, did Mr. William F. Kettenbach know the arrangements you had with Mr. Ferris relative to taking up this claim? A. He did.

Q. Did you tell him about them? A. Yes, sir.

Q. When?

A. At the same time I told him about the others.

Q. What do you mean by the same time you told him about the others?

A. When I made arrangements for all the loans, when I made arrangements to buy claims up, at that time, to advance the money.

Q. And did you negotiate the transfer of Mr. Ferris' claim? A. To Mr. Kettenbach?

Q. Yes. [2040—1710] A. Yes, sir.

Q. Do you know how much Ferris got, over and above what the expenses were?

A. No, I don't remember.

Q. You know George Ray Robinson?

A. I do. [2041—1711]

Q. Do you know George Ray Robinson?

(Testimony of C. W. Robnett.)

A. I do.

Q. Did you have any transaction with him relative to his taking up a timber claim? A. I did.

Q. Will you state how it came about, and what happened?

A. Why, one evening Mr. Ferris brought him up to the house, and I explained to him the claims we had to locate in 39-3, and the deals we had on, and that I could get him a couple of hundred dollars out of his claim, and all the money would be advanced.

Q. For what?

A. For the location fee, and for the final proof, and after final proof why he would give a mortgage until the claim could be sold.

Q. And what was he to do with the claim?

A. He was to deed it to whoever I designated when I made a sale of it.

Q. Now, were you talking to Mr. Ferris or Mr. Robinson?

A. I was talking to both of them at the same time.

Q. Was anything said about what he was to get for his claim—Mr. Robinson? A. \$200.00.

Q. And did you locate him on a claim?

A. He was located later.

Q. Do you remember who provided the locator for him? A. I did.

Q. Do you remember who the locator was?

A. Why, Mr. Knight and Mr. Benton.

Q. And did you furnish him the money for the locator? A. I did.

Q. And for the final proof? A. Yes, sir.

(Testimony of C. W. Robnett.)

Q. Did you take a note for the final proof money?
[2042—1712]

A. Yes, sir, and a mortgage. I endorsed the note over to Mr. Kettenbach, without recourse.

Q. When was that??

A. Right after receiving it.

Q. And did you subsequently negotiate the sale of it to Mr. Kettenbach? A. Yes, sir.

Q. Was Mr. Kettenbach advised of the arrangement you had with Mr. Robinson?

A. Yes, sir, he was, the same as of the others.

Q. You told him the agreement you had with Mr. Robinson? A. Yes, sir.

Q. That was before he advanced the money for final proof? A. Yes, sir.

Q. Now, do you know George Morrison?

A. Yes, sir.

Q. Did you have any transactions with him relative to taking up a timber claim? A. I did.

Q. Do you know what Mr. Morrison's business was? A. I think he was a carpenter.

Q. And do you know how long he had been in Lewiston before?

A. No, I don't know the exact time.

Q. Do you know how long he remained after his final proof? A. Only a day or two.

Q. Now, state what your transaction with him was relative to a timber claim.

A. I was to pay him \$200.00 for the timber claim.

Q. Now, state what you said to him, whether it

(Testimony of C. W. Robnett.)

was a loan, and did you approach him or did he approach you?

A. No; he was brought to me by Mr. Varney, and I told him that I would locate him on a timber claim in 39-3, and would arrange for him [2043—1713] to hold the claim and arrange to get him all the money for a location fee and for the final proof, and that I had some deals on whereby I thought I could dispose of the claim right after the proof, but that in the event that I did not he was to give a mortgage for the money advanced, and as soon as I could sell the claim I would give him \$200.00 out of it.

Q. Now, what was he to do with the claim in the event the deal went through?

A. He was to deed it to whoever I designated.

Q. And was that arrangement before he located on the land? A. It was before he filed.

Q. And what did he say when you made that proposition?

A. He said that was all right, perfectly satisfactory.

Q. Well, how long after that conversation did he locate?

A. Why, I don't know—a few days—I don't know just how many days.

Q. And did you procure the locator for him?

A. I did.

Q. And who paid the fee of the locator?

A. I did.

(Testimony of C. W. Robnett.)

Q. And do you remember who furnished the final proof money?

A. I furnished the final proof money, and instead of taking a note I furnished the deed and Mr. Kettenbach took it up. Mr. Kettenbach raised the final proof money, along with the others.

Q. And you took a deed at once to him, did you?

A. Yes, sir.

Q. And do you know how much you negotiated that for? A. Yes—for \$200.00.

Q. And Mr. Morrison got \$200.00? A. Yes.

Q. And did Mr. Kettenbach know anything about the arrangement you had with Mr. Morrison? [2044—1714] A. He did.

Q. You told him all about it? A. Yes, sir.

Q. Do you know Edward M. Hyde? A. Yes.

Q. Was he a resident of Lewiston, or just a sojourner? A. A sojourner.

Q. What was his occupation?

A. Why, I don't know.

Q. Was he there with Mr. Morrison and Mr. Clute and these gentlemen you have named?

A. Not Mr. Clute.

Q. Mr. Pierce? A. Yes.

Q. Were they there on some contract or some work there at that time, do you know?

A. Why, they were working, I think, on the Catholic hospital. I don't know whether he was a mason or what his work was.

Q. Did you have any transaction with him relative to his taking up a timber claim? A. I did.

(Testimony of C. W. Robnett.)

Q. Well, state what it was.

A. Why, he was brought to me by Mr. Varney, and—

Q. Now, who was Mr. Varney, and did you have any connections with him relative to taking up timber claims?

A. No; he was a friend of mine, and every entryman that he brought that filed and went ahead with the claim I gave him \$15.00 out of the location fee.

Q. Now, state your connections or your relations with Mr. Hyde.

A. Well, I told him I would locate him up on a claim in 39-3, and would take his note for the location fee, and that I had a deal on for the selling of all that timber, and I thought I could get \$200.00 out [2045—1715] of his claim for him, and in case the deal wasn't so that I could sell the claim at the time of the proof that I would advance him the money, and he was to give a mortgage.

Q. And what did he say about it?

A. He said that was all satisfactory.

Q. And did you furnish him all the money?

A. I did.

Q. And he entered?

A. He entered and proved up.

Q. Do you remember who his locator was?

A. Knight and Benton.

Q. And who paid Knight and Benton the location fee? A. I did.

Q. And who gave Mr. Hyde the money for final proof? A. Mr. Kettenbach.

(Testimony of C. W. Robnett.)

Q. Well, did he give it to him personally?

A. No. I attended to all the transactions.

Q. And when was that relative to the date of final proof? A. Why, the day of the final proof.

Q. Now, did you negotiate the sale of that claim?

A. It runs in my recollection that he didn't give any mortgage. He deeded the claim right over that day to Mr. Kettenbach.

Q. Well, do you mean the deed run to Kettenbach, or that you negotiated the sale?

A. Well, I negotiated the sale, and he deeded it right to Mr. Kettenbach.

Q. How much did he get out of it? A. \$200.00.

Q. And where did he get the money from—the \$200.00?

A. Why, I handed it to him. Mr. Kettenbach put up the money.

Q. And did Mr. Kettenbach know of your agreement with Mr. Hyde?

A. He did. [2046—1716]

Q. And you told him about that at the same time you told him about the others? A. Yes, sir.

Q. Do you know one Van V. Robertson?

A. I do.

Q. Did you have any dealings with him relative to his taking up a timber claim? A. I did.

Q. Where did Mr. Robertson reside at that time?

A. Lewiston, Idaho.

Q. Was he a resident there? A. Yes.

Q. What was his business?

A. Why, he was in the saloon business. I don't

(Testimony of C. W. Robnett.)

know whether he was running the saloon himself or the bartender.

Q. Now, did you approach him relative to taking up a timber claim, or did he come to you?

A. Why, Mr. Varney spoke to him about it, and he came to me.

Q. Well, what did he say?

A. He said that he wanted to take up a timber claim, and I told him that I would locate him, and if he wanted to—he said he could pay the location fee, and I told him if at the time of final proof if he didn't have the money why I would get him the money, and that a deal was on and I could get him \$200.00 out of his claim as soon as the deal would be closed, and if the deal wasn't right ready to close he would have to give a mortgage at the time he made his final proof.

Q. Well, who was going to control the disposition of these claims? A. Why, I was.

Q. And what was he to do with his claim to make this \$200.00?

A. He was to deed it to whoever I designated.

Q. Well, what did he say about that?

A. That it was perfectly satisfactory to him.

[2047—1717]

Q. And what did he do in furtherance of that?

A. Well, he went ahead and filed and proved up.

Q. Did you give him the money?

A. I gave him the money for the final proof.

Q. And did you take a mortgage?

A. I did.

(Testimony of C. W. Robnett.)

Q. Do you remember how much it was for?

A. \$500.00, I believe.

Q. And did you take a note at that time?

A. I did.

Q. And what did you do with the mortgage—the note that he gave you to secure the mortgage—which the mortgage was given to secure?

A. Why, I signed the note on the back and put it into the Lewiston National Bank, and took credit for it.

Q. And did you have any arrangement with anybody relative to conducting that transaction that way? A. Mr. Kester.

Q. Mr. Kester? A. Yes.

Q. And did he know the arrangement you had with Mr. Robertson? A. Yes, sir.

Q. And how did he know that? A. I told him.

Q. And did you tell him all about the arrangement with Robertson? A. Yes, sir.

Q. And did you negotiate—did you conduct the conveyance of this property? A. To the bank?

Q. Yes.

A. No. Mr. Kester wrote Mr. Robertson after a certain length of time and asked him to give a deed to the bank. [2048—1718]

Q. Do you know Mr. Drury M. Gammon?

A. I do.

Q. Was he a resident of Lewiston?

A. He was.

Q. What was his business at that time?

A. Waiting on the table in the hotel.

(Testimony of C. W. Robnett.)

Q. And did you have any transaction with him relative to his taking up a timber claim?

A. I did.

Q. Now, state all you can remember about it.

A. Why I ran on to a claim in 40 and 3, and I went to Mr. Gammon and told him that if he would file on that claim that I would advance all the money, and when the claim was sold I would give him \$350.00 out of it.

Q. Now, is that the first conversation you had with him?

A. Yes, that is the first conversation; and he said that he would file and prove up and deed the claim under those agreements—arrangements.

Q. And did you furnish him any money?

A. Yes; I furnished the money for his trip into the timber, and for the filing fee—\$9.00.

Q. And what else?

A. And all the money for the final proof, and under this arrangement when it came time for the final proof why I had him give a mortgage to Mr. Kester.

Q. This Drury M. Gammon? A. Yes.

Q. And did you conduct the sale of this land?

A. Why, I bought it.

Q. And how much did you give him over and above expenses?

A. Let me see now—I think it was \$350.00.

Q. Did you ever have any relations with Mr. William B. Benton [2049—1719] relative to his taking up a timber claim? A. Yes, sir.

(Testimony of C. W. Robnett.)

Q. Now, what was your arrangement with him?

A. He was to go ahead and file and prove up, and I was to stand all the expenses, and we were to divide the profits. He agreed to the conditions and went ahead.

Q. Well, one minute, before we get on to that. You say you took a deed to yourself from Mr. Gammon? A. Yes, sir.

Q. And did you afterwards deed it to somebody else?

A. I deeded it to the Lewiston National Bank.

Q. And did Mr. Kester know anything of the arrangements you had with Mr. Gammon when you— Did I understand you to say you got the money from him for that land? A. For the final proof.

Q. From Kester? A. Yes.

Q. And did he know the arrangements you had with Mr. Gammon? A. He did.

Q. How did he know that? A. I told him.

Q. Now, do you remember how much you got out of that deal?

A. No. At the time I deeded that claim there was another one for \$2500.00 to the bank—payable—an indebtedness there.

Q. Well, was there any arrangement between you and Mr. Kester and Mr. Kettenbach about a divide on that claim?

A. It was on the—not on that claim, but on the Van Robertson claim.

Q. Now, what was that arrangement? What was the divide on that?

(Testimony of C. W. Robnett.)

A. Well, whatever was made out of it above paying the expenses to the bank would be divided.

Q. Now, speaking about the William B. Benton claim, state what [2050—1720] arrangement, if any, you had with him?

A. Why, he was to go ahead and file and prove up, and when the claim was sold we were to divide the profits, and I was to stand all expenses, and we were to deduct all the expenses from the price to whoever we sold, and divide it.

Q. And who was to control the disposition of that land? A. Why, I was.

Q. That was the agreement with Mr. Benton?

A. Yes.

Q. And this was before any entry at all was made?

A. Before any entry was made.

Q. Who paid the money for the expenses of taking up the claim? A. I did.

Q. How was it furnished?

A. Why, by him giving a check on the bank, and I took care of the checks.

Q. And did he have an account at the bank?

A. No, sir.

Q. And did he check on the bank? A. He did.

Q. To an amount sufficient to take up the claim?

A. Yes, sir.

Q. And make the proof? A. Yes, sir.

Q. And do you know what became of the claim after proof was made?

A. Why, it was finally deeded to me, and then to Mrs. White, and then to the Clearwater Timber Company.

(Testimony of C. W. Robnett.)

Q. Now, did any of the defendants know of the arrangements you had with Mr. Benton relative to the taking up of that claim? A. They did.

Q. Which one of them knew that?

A. Both of them—or all of them. [2051—1721]

Q. Now, did you have any negotiations with Mrs. Elizabeth White relative to deeding this claim to her? A. No, sir.

Q. With whom did you conduct the negotiations?

A. Why, with Mr. Kettenbach.

Q. And with whom was the settlement made with Mr. Benton?

A. I made the settlement; I advanced the money; he drew through the checks to the full extent of what he was entitled to.

Q. Did you know anything about the transaction of the conveyance of Mrs. White to the Clearwater Timber Company?

A. The deal was negotiated by Mr. Kettenbach.

Q. Do you know anything about it, or don't you?

A. I know he arranged, or he said he could arrange if I deeded the claim to Mrs. White he would be able to negotiate the deal.

Q. Well, did you see the agent of the Clearwater Timber Company relative to this?

A. No. Mr. Kettenbach said not to see him; that he would see him and negotiate the deal.

Q. What was your purpose in conveying it to Mrs. White?

A. Why, on account of the Clearwater Timber Company officials wouldn't take a claim that came direct through myself or Mr. Kester or Mr. Ketten-

(Testimony of C. W. Robnett.)

bach, but if it came through Mrs. White they would take it.

Q. Well, where did you get that information from? A. From Mr. Kettenbach.

Q. Now, do you know Mr. Joel H. Benton?

A. I do.

Q. Did you have any transactions with him relative to taking up a timber claim? A. I did.

Q. Now, state what they were.

A. Why, he was to go ahead and—

Q. Now, you say “he was to go ahead.” Now, state what happened first. [2052—1722]

A. Well, the starting of the proposition was when we went up and looked at the homesteads, and while we was there at the homestead—

Q. Now, you haven’t said anything about his going up to a homestead. Tell us about that.

A. Well, in the summer of 1902 I located—that is, I paid for three location fees to Mr. Smith—W. A. Smith—for locations on unsurveyed land, and on one of these claims I put Joel H. Benton, and the other W. B. Benton, and the other Mrs. Harris.

Q. Mrs. Mary Harris?

A. Yes.

Q. Now, what were they to do? What was your arrangement relative to that?

A. They were to go ahead and stay there, and I was to pay all expenses and when the timber came in—was surveyed and thrown open for settlement, they were to file on that timber and stone entries and prove up, and we were to sell the claims and divide the profits.

(Testimony of C. W. Robnett.)

Q. Who was to control the sale of them?

A. I was.

Q. And who was to furnish the money for all of this? A. I was.

Q. Did you furnish them all the money?

A. Why, we never went through with the deal.

Q. Well, did you start the deal?

A. We started it; they stayed up there one Sunday.

Q. And who paid the expenses? A. I did.

Q. And did you pay each one the expenses, or did you have one of them that you gave the money to pay the expenses of all of them?

A. Well, Joel H. Benton was supposed to check out for all the expenses up there.

Q. You say was supposed to—did he? [2053—1723]

A. Well, he checked out most of the expenses; some of the expenses of some of them I paid.

Q. How did he check it out?

A. Why, he had a check-book and just checked on the Lewiston National Bank.

Q. Did he have an account at the bank?

A. He did not.

Q. How were the checks taken care of?

A. They were taken care of and charged to my account.

Q. Now, you say that deal fell through?

A. Yes, sir.

Q. Now, was that before his taking up a timber claim?

A. Well, he was up there on this homestead at the

(Testimony of C. W. Robnett.)

time, and I was up in the timber, and Mr. Smith came along and said he had a couple of claims in 39-3 that could be filed on right now.

Q. All right?

A. So I told him to go ahead and under the same arrangements I would carry it through, I would stand the expenses, and when the claim was sold we would divide the profits.

Q. Well, who was to sell the claim? A. I was.

Q. What did he say about that?

A. It was satisfactory.

Q. And did he proceed?

A. He proceeded and filed and proved up, and later on—

Q. Who furnished all the money? A. I did.

Q. And did you subsequently get a deed for this property? A. I did.

Q. And what did you do with the property?

A. Why, I deeded it to Mrs. White.

Q. Now, did anybody know of your negotiations and your agreement [2054—1724] with Mr. Joel H. Benton?

A. Mr. Kester and Mr. Kettenbach.

Q. How did they know that?

A. From our conversations and checks, etc.

Q. You told them the arrangement you had with him? A. Yes, sir.

Q. And who negotiated the conveyance to Mrs. White? A. Mr. Kettenbach.

Q. That is William F. Kettenbach?

A. Yes, sir.

(Testimony of C. W. Robnett.)

Q. And do you know why it was you conveyed to Mrs. White?

A. Only Mr. Kettenbach's statement, the same as on the W. B. Benton claim.

Q. And what was that?

A. That he could negotiate a deal with the Clearwater Timber Company if the land was deeded to Mrs. White, or otherwise they wouldn't buy it from any of us.

Q. Well, did he state why they wouldn't buy it from any of you?

A. Well, on account of the investigations and the trials that were pending.

Q. Do you know Pearl Washburn? A. I do.

Q. Did you have any dealings with her relative to taking up a timber claim? A. I did not.

Q. Did you know anything of the conditions under which she took up a timber claim?

A. Well, Kettenbach advanced the money for her taking up the claim.

Q. Do you know anything about whether or not she had an arrangement with Mr. Kettenbach, of your own knowledge?

A. No, I don't. I know that he always— [2055—1725]

Q. Well, I don't want anything except what you know of your own knowledge.

A. No, I don't know.

Q. Did you have any relations with Gerry Vanartsdalen relative to his taking up a timber claim?

A. No, sir.

(Testimony of C. W. Robnett.)

Q. Do you know John E. Nelson? A. I do.

Q. Did you have any relations with him relative to his taking up a timber claim? A. I did.

Q. Well, now, state what your arrangement with him was, if any. A. Why,—

Q. Did you go to see him, or did he come to see you?

A. I saw him on the street and asked him if he didn't want to take up a timber claim. He said he did, but he didn't have any money, and I told him I had arrangements made whereby I could take care of whatever money was needed if he would give a note for the location fee, and that Mr. Curtis Thatcher would advance the money for the final proof and also for the location fee, and at the end of the time he could give his note provided the sale wasn't made, and I thought I could get him \$200.00 out of his claim, and he said that was all right and it was perfectly satisfactory, and that if I was certain that he would get that much out of it he would go ahead and make the deal—go ahead and file.

Q. Now, this conversation was before he went to the land? A. Yes, sir.

Q. You were to furnish all the money, were you not?

A. Yes, sir, excepting his expenses up into the timber, which he paid.

Q. And who was to control the sale of this land?

A. I was.

Q. Well, did he accept that proposition? [2056—
1726]

(Testimony of C. W. Robnett.)

A. Yes, he accepted that, and filed and proved up, and gave a mortgage to Curtis Thatcher, and I think he finally deeded it to Curtis Thatcher.

Q. And did Mr. Thatcher know anything about your arrangements with Mr. Nelson?

A. No, he didn't know anything about it no more than I was to arrange to sell it; that I had deals on to dispose of the timber claims.

Q. Did Mr. Thatcher know that you were to furnish Mr. Nelson all the money?

Mr. TANNAHILL.—We object to that as a conclusion. Let him state what was said.

Mr. GORDON.—Q. What did you tell him?

A. Well, I told him that the money was to be furnished by me to Mr. Nelson for the location fee and for the final proof, and that he would give me a mortgage after the final proof.

Q. Well, did you tell him anything further about the arrangement you had with Mr. Nelson?

A. Well, that it was to be included in the sale of the timber claims that I was bunching up to be sold in a deal that I had pending.

Q. And you told him that before he advanced the money?

A. Yes, sir—at the time.

Q. Did you tell Mr. Nelson about this deal?

A. Yes, sir, I told Mr. Nelson.

Q. That you were assembling claims for that purpose?

A. Yes, sir.

Q. That was before Nelson went to the land?

A. That was before he went to the land.

Q. Now, do you know Mr. Soren Hansen?

(Testimony of C. W. Robnett.)

A. I do.

Q. Did you have any relations with him—transactions with him relative to a timber claim?

A. I did. [2057—1727]

Q. Well, now, state all of the transaction you had with him.

A. Why, he was a farmer out there, out from Lewiston, and I run on to him on the street and asked him if he didn't want to take up a timber claim, and he said he did but he didn't want to use any of his money; that he needed it all on his farm. I told him there was a chance for him to make \$200.00 if he wanted to take up a claim, and I told him about the deal that was pending and that I would get him all the money from Curtis Thatcher, and if he wanted to go ahead we would get him \$200.00 or \$250.00 out of the claim.

Q. Was anything said as to what he was to do to get this \$200.00?

A. He was to go ahead and file, and prove up and give a mortgage on the claim if the deal wasn't ready to close at that time, for a year, and I was to have the handling of the claim so that I could make the deal as soon as anything was in shape for it.

Q. Well, what was he to do?

A. He was simply to go ahead and deed the claim over to whoever I should designate, and receive the \$200.00.

Q. And did he accept that proposition?

A. He accepted it.

Q. Did you furnish him all the money?

(Testimony of C. W. Robnett.)

A. I did.

Q. And did he afterwards convey that property to somebody?

A. Yes; he made out a deed to the Clearwater Timber Company.

Q. Now, do you remember what the first deed was he made out?

A. Well, he made out a deed sometime, I think it was in the bank, when I had a sale on.

Q. Well, was the deed in blank? A. In blank.

Q. Now, did any of the defendants know of this arrangement you had with Mr. Soren Hansen?

A. Yes.

Mr. TANNAHILL.—We object to that as calling for a conclusion of [2058—1728] the witness and not stating a fact.

Mr. GORDON.—Well, if you will wait, I will ask him now.

Q. Did you tell them anything about it?

A. I did.

Q. Now, state all you told them about it.

A. I told Mr. Kester and Mr. Kettenbach both, I told them all about it a number of different times, in regards to the conversation we had relative to timber matters.

Q. Then, you never used that deed that was made in blank? A. No, sir.

Q. Well, now, state what happened next relative to that claim.

A. Why, I seen Mr. Hansen in town and told him that I could get him so much money out of the claim, and had him make out a deed to the Clearwater

(Testimony of C. W. Robnett.)

Timber Company, his wife was there, and he acknowledged it, and the consideration I believe was left blank, and he made it out and I paid him the money.

Q. How much did you pay him?

A. My recollection is somewhere between \$60.00 and \$80.00.

Q. And where did you get the money with which to pay him with?

A. From the Lewiston National Bank, from Mr. Kettenbach.

Q. And had you talked with Mr. Kettenbach about that? Why was the deed made out to the Clearwater Timber Company?

A. Why, because he had arrangements made with Nat. Brown for them to buy the claim.

Q. And did you deliver that deed to Mr. Kettenbach? A. I did.

Q. Well, now, was there another deed procured from Hansen that you know of?

A. No, there wasn't. I made out another deed something like two months afterwards and sent it up to Mr. Hansen.

Q. Now, who was the grantee in that deed?

A. W. F. Kettenbach. [2059—1729]

Q. And what became of that deed?

A. I don't think it was ever delivered.

Q. You sent it to Mr. Hansen, did you?

A. Yes, sir.

Q. Did you ever see Hansen after that?

A. Yes.

(Testimony of C. W. Robnett.)

Q. And ask him why he didn't deliver the deed?

A. Yes, sir, I seen him and asked him if he had delivered the deed, and he said he had not; he wanted to see me first and get the other deed back.

Q. What deed was that?

A. The Clearwater Timber Company deed.

Q. Do you know Robert O. Waldman?

A. I do.

At this time a recess was taken until 1:30 o'clock
P. M. [2060—1730]

The hearing was resumed at 1:30 P. M., pursuant to adjournment.

CLARENCE W. ROBNETT, recalled for further direct examination, testified as follows:

Mr. GORDON.—Q. Mr. Robnett, just before adjournment, I asked you if you knew Mr. Robert O. Waldman. A. Yes, sir.

Q. Did you ever have any transactions with him relative to taking up the timber claim that he entered upon? A. Yes, sir.

Q. Where was that?

A. I went to the store where he was working, the Fair store.

Q. Where was this? In Lewiston, Idaho?

A. In Lewiston, Idaho; yes.

Q. What did you say to him?

A. I asked him if he wanted to take up a timber claim, and he says, "Well, I am building a house, and I wouldn't take up a timber claim unless I could sell it right away," and I says, "Well, I will tell you what I will do; if you want to take up a timber claim, I

(Testimony of C. W. Robnett.)

have one up here, and I know what it is, and I will give you \$400.00 for your right."

Q. Was anything said about money?

A. "All the money for expenses that you need I will furnish, and you will get \$400.00 clear out of the timber claim, so much at the time of the proof, and the balance a little later on."

Q. Well, now, what was he to do to make that?

A. Why, he was to file on the timber claim and make proof and deed the same to me as soon as proof had been made.

Q. What did he say about it? [2061—1731]

A. He said that would be all right, he was perfectly willing to sell his right for \$400.00.

Q. Well, did you have him locate it?

A. He went ahead and filed, and I paid the expenses up to the timber and back, and also for the filing, and at the time of the final proof I gave him the money, and he went over and made his proof, and came back and give me a deed, that afternoon or the next day or two, and I gave him I think \$200.00, and later on, why—

Q. Who was the deed to?

A. The deed was direct to me.

Q. Well, what did you do with the deed? Have you still the deed?

A. No; I sold—deeded that to the Lewiston National Bank.

Q. How was it that you happened to deed it to the Lewiston National Bank?

A. Why, in the settlement up of affairs when I

(Testimony of C. W. Robnett.)

left the institution I deeded that with other deeds, in one deed.

Q. With whom did you have your negotiations?

A. Why, Mr. Frank Kettenbach was in there at that time, but it was understood before that that that claim if it wasn't sold was to be deeded to the bank, with Mr. Kester and Mr. Kettenbach, Will Kettenbach.

Q. Did Mr. Frank Kettenbach know of your arrangement with Mr. Waldman? A. Yes.

Q. How did he know that?

A. Why, I told him about it.

Q. Do you know Mr. Ellsworth M. Harrington?

A. I do.

Q. Do you know whether he took up a claim under the timber and stone act? A. He did. [2062—1732]

Q. Did you have any arrangement with him before he made his entry relative to taking up a timber claim? A. Yes, I located him.

Q. Now, begin at the beginning, if there is any beginning. Did you talk with him before locating him?

A. He came down to the house one evening; yes, sir.

Q. Your house?

A. Yes, sir; Mr. Knight had spoken to him about taking up a claim and asked him to come down to see me. He came down there and I told him the boys had some timber claims—

Q. Who were the boys?

(Testimony of C. W. Robnett.)

A. Ed. Knight and Will. Benton.

Q. Were you interested in those claims?

A. Yes, I was interested with them in the location. And if he would go ahead there and locate and let me handle the claim and put through the deal I could get him I knew perhaps \$300.00 on the claim for his right, and the balance above that, why, I would take for my trouble, but that would give him \$300.00 for the claim out of the deal.

Q. Was anything said about furnishing the money?

A. Yes, he wanted to know how about the money in case the deal didn't go through, and I told him I had arrangements whereby I could get the money to pay the location fee and pay for the final proof, and that he would have to give a mortgage at the time and give a note.

Q. What did he say?

A. He said that was all right and satisfactory.

Q. What was he to do to make the \$300.00?

A. He was to deed the claim to whoever I designated.

Q. What did he say about that?

A. He said that was all right, he would leave the matter in my [2063—1733] hands to handle, and whenever I asked him to deed the claim he would do so.

Q. Did you have him located? A. I did.

Q. Who paid the location fee, or the fee of the location? A. I did.

Q. Who paid the filing fees?

(Testimony of C. W. Robnett.)

A. I don't know whether I did or he did, but I think I did.

Q. And who paid the final proof? Who furnished the money for final proof? A. Will Kettenbach.

Q. And who negotiated for the money?

A. I did. I got the money when it came to final proof, and after final proof he gave a note to me for the amount of the location fee and the money advanced, the bonus, and I endorsed the note without recourse to Will Kettenbach.

Q. Do you know whether the land was ever transferred from Mr. Harrington?

A. Yes, sir; it was transferred to Will Kettenbach.

Q. When was that note taken,—at the time of final proof? A. Taken at the time of final proof.

Q. You didn't assign the mortgage, did you?

A. No, sir.

Q. Who negotiated this transfer to Will Kettenbach? A. I did.

Q. Did Mr. Kettenbach know of your agreement with Mr. Harrington? A. He did.

Q. Did he know at the time that he advanced the money for final proof? A. He did. [2064—1734]

Q. How did he know that?

A. By previous conversations and matters that I told him.

Q. Previous conversations with you?

A. Yes, sir.

Q. Mr. Robnett, did you have any papers or memoranda or plats or checks which you used in these

(Testimony of C. W. Robnett.)

timber transactions that you have related?

A. I did.

Q. Where are they now?

A. Why, I left them in my tin boxes in the Lewiston National Bank.

Q. What do you call your tin boxes,—private boxes? A. Private boxes.

Q. Safety deposit boxes?

A. Safety deposit boxes.

Q. Have you ever made a demand for that box?

A. I have.

Q. Was the demand complied with, or was it denied? A. It was refused.

Mr. GORDON.—I make a demand of counsel for the Lewiston National Bank, on the record, to produce the safety deposit box of C. W. Robnett, containing the memoranda and checks, and so forth, referred to in my question, relative to the transactions in suit.

Mr. BABB.—Will you furnish me a copy of that interrogatory there, those items?

Mr. GORDON.—He can read it to you (indicating the stenographer).

Mr. BABB.—I would like to have a copy of it to see what you wanted.

Mr. GORDON.—Q. Do you recall any checks that you used in these transactions at the present time that are in that box?

A. The checks that went to pay for the Waldman claim, the Gordon [2065—1735] claim—

Q. That claim isn't in suit though.

(Testimony of C. W. Robnett.)

A. Oh, it isn't in suit,—and the Mack. Gammon claim.

Q. Drury M. Gammon?

A. Drury M. Gammon.

Q. What other papers relative to these transactions were in that box?

A. The plats of the different lands owned by myself and over which I had control, and also the claims and land owned by Kester and Kettenbach, which I had at different times worked on the different details, made at the time of different—

Q. Were there any letters or correspondence in your private box or boxes which you have referred to relative to these transactions or the timber transactions of Kester and Kettenbach?

A. Yes, there was some letters there from different parties.

Q. Do you recall from whom they were?

A. Why, from,—there is a letter there from Wilbur Yeadsley, on a deal that we had pending, then letters from other people; I don't recall now just who they were.

Q. Did you take any care, Mr. Robnett, of the character of the people that you would locate on these claims?

A. Yes; I never located anybody but what I had the handling of their claims, that is, would have the right to sell the claims.

Q. Did you locate anybody on any claim who wouldn't make an agreement with you before they entered it to convey it to whom you would direct?

(Testimony of C. W. Robnett.)

A. No.

Q. In your first conversation with Mr. Kester relative to your arrangement with him and Mr. Kettenbach about taking those timber claims was any definite amount fixed or share stated that you were to receive from these claims? [2066—1736]

A. No, they didn't; they said that whenever there were any claims that I was instrumental in turning over and that they got possession of when the claims were sold, that I should share in the profits.

Q. And there was nothing said as to what that share should be?

A. No; that they would treat me right in regards to that, and I was to share in the profits.

Q. Do you know how many claims you did turn over to them under that arrangement?

A. Well, there was a great many.

Q. Well, I mean approximately.

A. Perhaps fifteen or sixteen.

Q. And have you still an interest in those claims to the extent of sharing in the profits?

Mr. TANNAHILL.—We object to that as leading and suggestive, irrelevant and immaterial.

Mr. GORDON.—Answer the question.

A. Yes, sir.

Q. Now, after your first conversation with Mr. Kettenbach and the conversation you had with Mr. Kester, shortly thereafter, that you have detailed relative to your arrangement for entering people on timber claims, did you have a number of timber claims cruised? A. Yes, sir.

(Testimony of C. W. Robnett.)

Q. Do you know how many there were?

A. There was about fifteen.

Q. And they were, according to your arrangement with Kester, not in the territory in which they were locating at that time, is that correct?

A. Yes, sir. Any claims I was to locate I always talked it over with them so as it wouldn't conflict.

Q. No; I am speaking now before you located about the cruising. [2067—1737] A. Yes, sir.

Q. You had cruised fifteen claims?

A. Yes, sir.

Q. Do you know in what territory that was?

A. That was in 39-3, and 39-2.

Q. Now, did you submit those estimates and cruises to anyone? A. Yes, sir.

Q. To whom?

A. To Mr. Kester and Mr. Kettenbach.

Q. Did you have any arrangement with either of them as to those claims when you had located entrymen on them?

A. I was to go ahead there and handle them—

Q. Don't use the word "handle." Tell what you were to do.

A. I was to go right ahead; they didn't care to enter that field just at that time, as it was second growth timber, and they wanted to use their entrymen in other territory, but later on, if they wanted to handle any of those things, they had the preference.

Q. Did you have that arrangement with them about having the preference right before you entered or placed any entrymen on those claims?

(Testimony of C. W. Robnett.)

A. I did.

Q. You have spoken here about having deals with some other people, that you were assembling claims with the purpose of selling to. Before you tried to deal with any other people did you have any talk or arrangement with any of the defendants prior to that time, as to whether or not you could enter into such an agreement? A. I did.

Q. Did you, in every instance, before you submitted it to anybody else, submit it to any one of the defendants? A. Yes, sir.

Q. To whom did you submit them? [2068—1738]

A. Why, to Mr. Kester and Mr. Kettenbach.

Q. Now, during the time of all these timber transactions, as far back as 1902, with which either you or Kester and Kettenbach had anything to do, what were your relations with Mr. Kester and Mr. Kettenbach?

A. Well, of a very confidential nature.

Q. Were you the confidential man at the bank?

A. Yes, sir.

Q. I will ask you whether or not all of your timber transactions and a great many of their timber transactions were discussed between you?

A. They were, very frequently.

Q. Do you know Harvey J. Steffey?

A. I do.

Q. Did you ever have any direction from any of the officers of the Lewiston National Bank relative to honoring his checks? A. Yes, sir.

Q. Well, state what it was.

(Testimony of C. W. Robnett.)

A. Why, Mr. Kester came to me and told me that all the checks of Mr. Steffey could be honored, as he was up in the timber doing some cruising, and also doing some locating for them, and at different times he was doing some buying, and his checks would be allowed, and whenever they came in they would be taken care of, and if there was an overdraft it was all right.

Q. Now, did you ever hear of a species of check that was known at the Lewiston National Bank, called the circle K check? A. Yes, sir.

Q. State what that was.

A. Why, it was a check on the Lewiston National Bank, signed by William Dwyer, with a circle K either in the upper left-hand corner or the lower left-hand corner. [2069—1739]

Q. What do you mean,—that there was a K put on it, with a circle around it? A. Yes, sir.

Q. Was that in any peculiar kind of ink?

A. Oh, no; his checks was made out sometimes in pencil and sometimes in ink, but it was to designate that those checks were timber transaction checks.

Q. Now, did Mr. William Dwyer ever have an account with the Lewiston National Bank?

A. No, sir.

Q. And these were drawn on the regular Lewiston National Bank check, were they? A. Yes, sir.

Q. How were they signed?

A. Signed William Dwyer.

Q. Do you know when those checks first came into use?

(Testimony of C. W. Robnett.)

A. When they started in the timber business, in 1902.

Q. How long did they continue?

A. Why, up to 1907, perhaps later.

Q. Can you tell anywheres near the amount that those checks would aggregate?

A. I should judge somewheres between a hundred thousand to a hundred and twenty thousand dollars.

Q. Do you know what those checks were used for?

A. They were used in the timber transactions, the purchasing of lands.

Q. Whose timber transactions?

A. Kester and Kettenbach's purchase of claims, and paying expenses up in the timber of the different parties that went out, crowds. [2070—1740]

Q. Do you know how those checks were disposed of, how they were entered, to whose accounts?

A. When they came in they were carried in the cash items until Mr. Kester and Mr. Kettenbach made up their checks; then they would take them up.

Q. Explain what you mean by "carried in the cash items."

A. Well, there is the teller's cash has the different kinds of cash subdivided, and also checks carried over, called cash items.

Q. Checks that are not settled up that day and entered in the books are carried as cash items?

A. Carried in the cash and counted as cash.

Q. You say these checks were carried in cash items until what was done with them?

(Testimony of C. W. Robnett.)

A. Whenever Mr. Kettenbach and Mr. Kester would make up their checks they would take up these cash items and divide them and subdivide them, and each one take so much of them, whichever it would be, or there would be sometimes notes given that would take them up.

Q. Do I understand then that these checks would remain as cash items until a considerable number had come in and then either Mr. Kester or Mr. Kettenbach would add them up and take them out and put something back in their place? A. Yes, sir.

Q. What would be put back in place of them?

A. Well, it would be checks of Mr. Kettenbach and checks of Mr. Kester, and sometimes notes were given by the different parties which would take up these items.

Q. To make up the total amount of the cash items?

A. Yes, sir.

Q. Do you know how long those circle K checks would remain from time to time as cash items?
[2071—1741]

A. Well, that varied according to the time; sometimes for a week and sometimes for a month, and sometimes longer.

Q. Do you know in what amounts they would reach before they were taken up, as a usual thing?

A. Well, it depended at that time altogether whether they were buying some timber at that time, or paying proof money; sometimes run up into eight or ten thousand dollars, or more.

Q. Do you know whether Mrs. Kittie E. Dwyer

(Testimony of C. W. Robnett.)

had an account at the Lewiston National Bank?

A. Yes, sir.

Q. Do you know over what period that account ran?

A. It run along a good share of the time—

Mr. TANNAHILL.—We object to that, as the books are the best evidence.

Mr. GORDON.—Well, we have got it in; this is merely preliminary.

WITNESS.—Along practically during the time of the timber transactions, I don't know but until I went out of the bank.

Mr. GORDON.—Q. Do you remember the date that you left the bank, severed your connection with the bank? A. The last time?

Q. Yes. A. March 19, 1909.

Q. Do you know what checks were charged to the account of Kittie E. Dwyer?

A. There were no checks supposed to be charged there except drawn by Mr. Dwyer; except ones that didn't have the circle K on, and there was different times where she had purchased timber claims checks were charged up to her account, and then later a note would be given. [2072—1742]

Q. Do you know whether or not any of the expenses of the timber transactions of Kester and Kettenbach and Dwyer were ever charged to that account?

A. I think not; not to my recollection, there was never any of them.

Q. Do you know how that account was ever supple-

(Testimony of C. W. Robnett.)

mented by deposits of any person other than Mrs. Kittie E. Dwyer and her husband, William Dwyer?

A. Sometimes Mr. Dwyer's checks, he would fail to put on the circle K, and they would come in and be charged up to Mrs. Kittie E. Dwyer's account, and then Mr. Dwyer would come in and those checks would be taken out and the ones intended for the timber transactions would be put back into the cash with a circle K, and a deposit slip would be entered crediting Mrs. Dwyer's account.

Q. Checks either drawn by Kittie E. Dwyer or by William Dwyer were honored out of that account, were they? A. Yes, sir.

Q. Do you ever know of any deposits being made or credits being made to that account by any of the defendants other than Dwyer?

A. Yes, sir; Mr. Kester made deposits in there at different times.

Q. Do you know what they were for?

A. Yes, sir; sometimes it was taking up some of those checks, and then for notes, and other timber transactions which should go into that account.

Mr. GORDON.—Before I forget it, Mr. Tannahill, do you remember, while we were taking depositions at Lewiston, that you asked that counsel for the Government would produce the homestead entry papers of a Mr. Flood and Mr. Williams?

Mr. TANNAHILL.—Yes.

Mr. GORDON.—I will state that I have advices from the officers [2073—1743] of the land office at Lewiston that, in compliance with my request, the

(Testimony of C. W. Robnett.)

general land office had forwarded the two sets of entry papers, and that they are at your disposal at the land office whenever you see fit to use them.

Mr. TANNAHILL.—All right. They will remain there until we get to Lewiston to take our evidence up there. You were saying something about some papers that Mr. Babb had gotten that Mr. Smith produced.

Mr. GORDON.—Yes, there was an exhibit that was produced the first day that Mr. Smith testified that I asked be read into the record, relative to the manner in which the stock was held at a certain time, I think it was July 7th, 1907, prior to July 7, 1907.

Mr. BABB.—January 7th.

Mr. GORDON.—January 7, 1907, and how it was held on that day, and I think that in getting ready to cross-examine Mr. Smith you called for that paper and some other papers, and you must have carried it off with your papers when court adjourned that day.

Mr. BABB.—I put my papers away and I didn't see any such paper among them when I got down to the office. It is not likely that I would carry it away when it was an exhibit; but when I go back I will look again.

Mr. GORDON.—And then there were some other papers that I think I handed you, Mr. Babb. It was the list of notes that the two \$20,000.00 notes of Mr. Kester's and the \$38,000.00 Colby, Coryel note, and that they were in renewal of.

Mr. BABB.—The \$9,500.00 note, you mean, in-

(Testimony of C. W. Robnett.)

stead of the \$38,000.00 note.

Mr. GORDON.—The Kester note—well, whatever they were. There were four or five sheets of paper, and I think you must have carried them off.

[2074—1744]

Mr. BABB.—I don't remember having those.

Mr. GORDON.—I handed them to you when you were cross-examining Mr. Smith.

Mr. GORDON.—Q. Mr. Robnett, do you remember an account in the Lewiston National Bank ledgers that was opened in the name of Kester and Kettenbach? A. Yes, sir.

Q. What was that account known as?

A. Why, transactions in which Mr. Kester and Mr. Kettenbach had, that they were in together, that they used to run through there a great deal, Kester and Kettenbach; sometimes they run part of their timber transactions through there, and other matters.

Q. Did that account have any name? Was it known in the bank by any particular name?

A. The Kester and Kettenbach account.

Q. Was that all? A. Yes.

Q. Known as the Kester and Kettenbach land account? If it wasn't, why say so.

A. No, not in particular.

Mr. GORDON.—Take the witness.

Cross-examination.

(By Mr. BABB.)

Q. Was there any other claim or land that you conveyed to the Lewiston National Bank other than the Robert Waldman claim? A. Yes.

(Testimony of C. W. Robnett.)

Q. What other one?

A. Why, the Gordon claim.

Q. Gordon? [2075—1745] A. Yes.

Q. Is that all?

A. The Gammon claim; I think that is all.

Q. With whom did you have your dealings for the transfer of the Gordon and Gammon claims to the Lewiston National Bank?

A. The close up was with Frank Kettenbach.

Q. I believe you stated—

A. Let's see. No; the claims that I transferred to Mr. Kettenbach was the Waldman and the Gordon claims. The Gammon claim was with Mr. Kester.

Q. Was that later?

A. No; that was before; the Gammon claim was the first one to be transferred, and the Waldman and Gordon claims was transferred in the same deal.

Q. About what date was the Gammon claim transferred?

A. Why, it was—I couldn't state whether it was in 1906 or 1907.

Q. What date was the Waldman and the Gordon claims transferred?

A. Well, the deeds were signed some time, I think, in September of 1907, or the 1st of October, somewhere along there.

Q. The patents had issued on those claims to the entrymen, had they, at that time?

A. It is my recollection that they had.

Q. All the matters then of the negotiations to secure the patents for those claims and securing

(Testimony of C. W. Robnett.)

deeds from entrymen had been closed up?

A. Yes, sir.

Q. Prior to the time Frank W. Kettenbach negotiated with you for the transfer of those claims to the bank? A. Yes, sir. [2076—1746]

Q. Now, what was the consideration for the transfer of those claims by you to the bank?

A. Twenty-five hundred dollars for the last two.

Q. When was that consideration paid?

A. Why, it was closed up, closing up some indebtedness there at the bank.

Q. Indebtedness owing by you to the bank?

A. Yes, sir.

Q. The consideration for those deeds then was money you was owing the bank?

A. A portion of it, yes.

Q. What portion?

A. I don't remember now just how much of it; a good share of it.

Q. Was you paid some cash in addition to what you was owing? A. It was placed to my credit there.

Q. And you afterwards drew it out?

A. Yes, sir.

Q. About how much of that was cash, what fraction?

A. I don't recall; I don't know just what the amount was.

Q. On the Gordon and Waldman claims, for instance?

A. That is the ones—the Gordon and Waldman claims are the ones we are talking about. I say I

(Testimony of C. W. Robnett.)

don't recall just how much the credit was.

Q. Well, was it \$10.00 or \$500.00 or \$1,000.00?

A. No; it was somewhere from \$300.00 to \$500.00, I think.

Q. It was placed to your credit the day of the date of those deeds, or the deed?

A. I couldn't say whether it was at that time or just when it was.

Q. It was placed to your credit when you closed the deal?

A. It was, about that time, I should judge.
[2077—1747]

Q. It is not likely they put it in your account and gave you credit for it till you delivered the deeds, is it?

A. I don't think so, no.

Q. Now, you were trying to make as good terms with Mr. Frank W. Kettenbach in selling those claims to the bank of which he was president as you could, were you not, in your own interest?

A. Why, I simply—he said that that at that time was all that they would give me for those claims.

Q. Well, you was trying to do as well for yourself as you could, were you not, in selling those claims to the bank?

A. Well, not necessarily, no, it is not that way; I considered that I had other interests—I would never have allowed the claims to go in at that price, but it was simply to close things up and get the indebtedness off the books.

Q. Well, you weren't doing anything in order to depreciate in the mind of Mr. Frank W. Kettenbach

(Testimony of C. W. Robnett.)

the value of the claims, were you?

A. No, sir, I was not; and he stated at the time that I deeded those claims over and paid the indebtedness there, he said that when those claims are sold, if they sold for more than that, "You can have it, with the interest up to the bank at that time."

Q. He said you could have it?

A. Yes, sir; if I could make the sale and close it up. It was simply a proposition of turning it over to them for the purpose of wiping out that indebtedness.

Q. He said that as a mere gratuity, that was a mere gratuity, wasn't it, simply a kindness on his part, was it not?

A. No, sir; one of the conditions. It was one of the conditions.

Q. You exacted that, did you?

A. Well, not necessarily exacted it, but I stated, "I ought to have got more out of those claims," and he says, "Well, I am perfectly [2078—1748] willing that you shall, but we want to get this matter straightened up and get it in a little better shape, and you can give a deed here and any time those claims can be sold you can have whatever is above that with the interest to the date of the sale."

Q. After you closed the deal you told him you should have gotten more than that? A. Yes, sir.

Q. Then, in response to that he told you that the bank didn't care for anything except to get their money out of it and interest, and when they sold it, if they got more than that, they would allow you that.

(Testimony of C. W. Robnett.)

Was that the nature of it?

A. In substance, yes, sir.

Q. That was a mere kindness on his part, a gratuity of his, was it not?

A. Well, it was nothing more than the understanding we had prior to that, that I was to get all I could out of the claims.

Q. If there was any kindness there you didn't see it, did you?

A. It was simply carrying out a friendly relation that was always existing between us.

Q. You did recognize that he did something toward you in a friendly way when he made that expression?

A. I considered it nothing more than as friends would deal, according to the understanding and agreement.

Q. Now, did you tell him anything derogatory to the kind of title the bank was getting?

A. I told him the conditions exactly, how I had bought the claims and all.

Q. You went on and told him, after patents had issued and after you had closed the deal with the entrymen long prior to that, and at a time when you was trying to make the best bargain with him on these [2079—1749] titles that you could in your own interest, you say you went on and narrated to him all this history about the invalidity of these titles, that you had violated the laws of the United States and induced these people to commit perjury, and told him all the circumstances, told him that the titles he was getting were void?

(Testimony of C. W. Robnett.)

A. Gotten under the same conditions as other claims taken up under that same nature.

Q. Why was it you narrated to Frank W. Kettenbach all that?

A. It was simply in answer to his question in regards to the title to those claims.

Q. What did he ask you about the title to those claims?

A. He wanted to know just how they were taken, and what I paid for them, and I told him.

Q. What did he ask you about how they were taken up?

A. He says, "How were these taken, who were the entrymen and how, under what conditions," and just what they cost me.

Q. You furnished him an abstract of title, didn't you? A. I did.

Q. That showed that title had issued?

A. Yes, sir.

Q. And you say that though there was a patent there in that abstract he went on to ask you about how the entrymen entered them and about what kind of arrangements they had?

A. In regards to what the claims cost me, and under what conditions the entrymen made the proof, that is, in a general way; we didn't go into all the details.

Q. He asked you all about that, did he, in the face of the fact that there was patent there? [2080—1750] A. Yes, sir.

Q. And you told him all the fraud on the part of

(Testimony of C. W. Robnett.)

those entrymen?

A. I told him the conditions exactly.

Q. That they committed perjury, and all that, did you?

Q. I told him I was to pay the entrymen whatever the price was, \$400.00 for one, and I think \$300.00 for the other, and the money was paid.

Q. You did that to help him make good terms in selling these titles to him, did you?

A. He knew the conditions under which timber claims were being secured that way by the rest of the boys there in the bank and myself; he was familiar with all those conditions.

Q. How did he come to ask you about this if he was already familiar with it?

A. He wanted to know if they was obtained the same way as the others.

Q. What do you know about what Mr. Frank W. Kettenbach knew about the way this business was done? A. Why, in conversations.

Q. He wasn't a party to any of these business transactions, was he?

A. Not to my knowledge, in regards to the boys' timber at that time.

Q. He wasn't interested in securing timber?

A. I don't know as he was; he wasn't, at least, working with the boys in regards to their claims.

Q. You never had any dealings with him in regard to timber, locating and entering timber and land and securing titles? A. No, I did not.

Q. Not a bit, did you?

(Testimony of C. W. Robnett.)

A. Not to my recollection. [2031—1751]

Q. And he wasn't in that business? You knew that, didn't you?

A. I don't know; as far as that is concerned I know that he was interested and kept pretty well posted in regards to the trend of the investigation.

Q. You knew he wasn't in that business, didn't you?

Q. Why, he wasn't in a way, but he was at the time that he took these two claims.

Q. What business was it?

A. Buying that tie timber; he was furnishing some tie contracts to the railroads, and I didn't know but what he could utilize—

Q. Which one of these claims did he have an interest in?

A. He had no interest as far as having an interest in those things, but you said about having anything to do with the timber.

Q. He had no interest in anything you have testified about, did he?

A. Nothing until the time he took them over for the bank.

Q. I am talking about a personal interest. He didn't have any interest in any claims you have testified about at any time?

A. Not to my knowledge.

Q. He didn't loan any money even for any of that business?

A. I don't know personally whether he did.

Q. I say you don't know of a case where he loaned

(Testimony of C. W. Robnett.)

any, do you, on any of those claims? Now, remember, I don't want you to testify about what you don't know personally. You were doing it just now.

A. I know, but I was just—

Q. Just name one where he had an interest.

A. I don't know as I can recall any one at the present time.

Q. Then, you don't know of a single claim where he either loaned money or where he had an interest of any nature in it, do you?

A. Well, not from him, I do not.

Q. I say that you don't know of a single claim that you have testified about in these cases here in which Frank W. Kettenbach had [2082—1752] any interest or for the securing of which he even loaned any money, do you?

A. You mean to the entrymen, or to Kester and Kettenbach?

The last question was upon request repeated by the Reporter.

A. Not unless it was money that the boys had borrowed over there at the Idaho Trust Company.

Q. Do you know of any? You say unless it was. The question is whether you know of any such claim in which he had an interest or for the securing of which he loaned any money. Answer that yes or no.

A. Personally, I do not.

Q. What do you mean when you say personally?

A. I mean only—

Q. Is that all you know? You don't know of any, do you?

(Testimony of C. W. Robnett.)

Mr. GORDON.—Mr. Babb, you asked him a question and then didn't give him a chance to answer. You asked him what he meant by personally.

Mr. BABB.—Q. That simply means that you yourself don't know of any such?

A. No, he never negotiated, had anything to do with any of the transactions.

Q. I am only questioning you personally. I am not questioning anybody else.

A. I understand that.

Q. Now, you also know that Frank W. Kettenbach was president of the Kettenbach Grain Company at that time? A. Yes, sir.

Q. Or Kettenbach Co., Limited, rather. It was transacting a very large business, wasn't it?

A. It was.

Q. And he was a pretty busy man in his own business, wasn't he? A. He was.

Q. And he didn't have much time for anything other than his own [2083—1753] business, did he?

A. I don't know; he seemed to be interested in a great many things.

Q. How is that?

A. He appeared to be interested in a great many things.

Q. Things he had his money in generally, wasn't it? A. Yes, sir.

Q. What was he pushing that he didn't have his money in?

Mr. GORDON.—I object to that. He didn't say

(Testimony of C. W. Robnett.)

he was pushing anything he didn't have money in.

Mr. BABB.—Yes, he says he was acquiring an interest in this timber business, and he has testified that he had no money in it of any nature whatsoever.

WITNESS.—I stated that he was taking an interest so far as knowing how things were going from a friendly way, if no other, and we often talked about it; we often walked up the street and talked the timber matters over.

Mr. BABB.—Q. Which Kettenbach?

A. Frank Kettenbach.

Q. When was it that you and Frank walked up the street?

A. During the times of the trials, while the trials were in process, and the investigations going on.

Q. When was that? How many times?

A. Why, I couldn't say, but a great many times we walked up in the evening. I would go down to the bank and go up about the same time he would be going up, and we would meet on the street and we would walk up, and, of course, he was interested in seeing everybody come out, and the conditions. He kept posted in regards to the testimony at the different trials.

Q. And during all those times you told him that you had not made [2084—1754] any prior agreements with any entrymen, and that you were innocent, and that these indictments were false and fraudulent, and that you were being wrongly treated by the United States Government, didn't you?

A. No, sir.

(Testimony of C. W. Robnett.)

Q. Didn't you testify on the trial of those indictments that you were innocent, that you hadn't made any prior agreements, the way you have testified here to-day? A. I may have.

Q. Yet you say you didn't talk to Frank Kettenbach that way? How does it come that you testified one way and talked to him the other?

A. Well, when I went on the stand there I wasn't on trial at that time; I went on the stand to do what I could to protect the boys.

Q. Well, then, these times that you walked up the street with Frank Kettenbach, you talked to him differently from the way you testified in the United States Court on that trial? A. Yes, sir.

Q. Didn't you testify concerning some of your own entries that you were negotiating for in your testimony at that time on the trial when you say you were testifying to protect the boys? A. I may have.

Q. Well, didn't you?

A. I think perhaps I did; I really don't know just what—

Q. Didn't you really?

A. I testified to every question that was asked me in regards to all those matters.

Q. And that testimony is different from what you have given here yesterday and to-day?

A. Yes, sir.

Q. And different from what you told Frank Kettenbach in these walks up the street with him?
[2085—1755]

A. In some respects perhaps it was, on account I

(Testimony of C. W. Robnett.)

didn't go into all the details.

Q. Those respects were pretty material respects, were they not?

A. In what,—what different features?

Q. They involved guilt or innocence, didn't they?

A. No; the transaction, the indictments in which I was principally interested those times was relative to them seeing the timber land, and they had no indictments in regards to these particular entries under discussion here.

Q. You testified though on the trial there concerning the entries you have testified about here yesterday and to-day?

A. Yes, some of them.

Q. And testified differently then from what you have testified now?

A. Yes, sir.

Q. And when you was trying to make the best bargain you could in your own interest to transfer these Waldman and Gordon claims to the Lewiston National Bank, after patent had issued, and you had secured the deeds from the entrymen, in order to help yourself make good terms with Mr. Kettenbach, the president of the bank, you told him all about the invalidity of the titles you was selling?

A. I didn't do that with the idea of trying to make a good deal, but the friendship that existed there in the whole thing, and as long as I didn't expose the proposition I didn't think the entrymen would either; I expected everything to be kept in the exact condition as had been testified to.

Q. You didn't expect at that time to expose it?

A. No, I did not.

(Testimony of C. W. Robnett.)

Q. You have changed your mind some time since about exposing it? A. I have.

Q. This change didn't take place in your mind, did it, until after you had been indicted in the United States District Court in Idaho for [2086—1756] misappropriating a large amount of funds of the Lewiston National Bank?

A. I decline to answer that question.

Q. Why is it that you decline?

A. Well, it is liable to lead on to other questions that is matters at issue, not connected with this case at all.

Q. Well, what if it does lead on to them, what is your objection to leading on to them?

A. A constitutional privilege that anything that is apt in any way to incriminate me or that is apt to come to trial later on.

Q. Oh, the ground is, you object because you are under indictment concerning a violation of the National banking laws?

A. Yes, sir; I am under indictment with Mr. Frank W. Kettenbach and Mr. Kester and Mr. Will Kettenbach.

Q. And to protect yourself on the trial of that indictment, or those indictments, whatever they are, you claim this privilege? A. Yes, sir.

Q. Well, you didn't change your mind about making that information you was giving Frank Kettenbach public until after the date those indictments were filed, did you?

(No answer.)

(Testimony of C. W. Robnett.)

Q. It was since those indictments were filed that you changed your mind about making this matter public?

A. I think that comes under the same reason, objecting that I don't think I would be compelled to answer that question. [2087—1757]

Q. Now, you testified about your deposit boxes in the Lewiston National Bank. How many did you have, or did you have more than one? A. Two.

Q. What kind of boxes were those?

A. One of them was— They were both tin or iron boxes, movable boxes, and one had the name "C. W. Robnett" painted on it, and the other had simply "C. W. R." on it. One had a Yale lock on it, and the other only had a common lock. One cost \$5.00 and the other only a dollar or a dollar and a quarter.

Q. What do you mean by the cost?

A. Well, that is what they cost. There is a difference in the boxes. The boxes were not just the same; one was a better box than the other.

Q. Is that what the bank paid for the boxes?

A. I bought the boxes; they were individual property; they were not property of the bank at all.

Q. Well, who did you buy them of?

A. I bought the box that cost me \$5.00 from Curtis Thatcher, of Thatcher & Kling.

Q. When?

A. Oh, perhaps 1903, somewhere right along there, maybe a little earlier.

Q. Where were those boxes kept in the bank?

A. On the shelves in the vault.

(Testimony of C. W. Robnett.)

Q. Were there any other similar boxes?

A. A great many.

Q. Near by them? A. Yes, sir.

Q. They looked just like the most of the safety deposit boxes in the bank there, didn't they?

A. The same as you can buy in any of these hardware stores.

Q. Well, I say, they looked like the most of the safety deposit [2088—1758] boxes that the bank had there in which customers of the bank placed their valuables?

A. Well, not boxes that were owned by the bank, but boxes that the customers brought in and left in the vaults. These were different boxes from the regular boxes installed by the bank.

Q. They looked more like the boxes that customers brought in there?

A. Yes, sir; they were the same as those.

Q. But they were kept right there, were they not, where all the safety deposit boxes of the bank were?

A. Why, on the shelves there. There were others that were stationary in there; they had places for them; but these others were on the shelves.

Q. You didn't pay a safety deposit rental to the bank?

A. No, sir, nor nobody else for those boxes.

Q. You didn't? A. No, sir.

Q. Was there any rentals paid for any boxes there?

A. Why, not to my knowledge; but those others were not installed anyway until later on, that is when the Idaho Trust Company moved over there and put

(Testimony of C. W. Robnett.)

in their safety deposit boxes.

Q. You don't know of anybody paying for the boxes there?

A. No, sir, there wasn't anybody paid to my knowledge.

Q. And that service was furnished just as a gratuity?

A. Yes, sir, to anybody that wanted to have private papers that they wanted to keep in the vault.

Q. Now, what was the difference between those boxes? Did you keep a different kind of matter in one to what you did in the other?

A. No; I just kept them—no different kind of transactions was kept in both of them; just whichever I happened to have down at the time I had the transaction I would put it in.

Q. There was a lock on one and not on the other?
[2089—1759]

A. There was locks on both of them; one of them was a stronger lock, and the other was a cheap lock.

Q. Now, what class of matter did you keep in those boxes?

A. My private papers and the plats and other papers relative to timber transactions, and some checks and one thing and another.

Q. What class of checks?

A. The checks that were relative to transactions of timber, and some personal, and other business which I was interested in.

Q. You was bookkeeper of the Lewiston National Bank at that time? A. I was.

(Testimony of C. W. Robnett.)

Q. And interested in other businesses, you say?

A. Yes, sir.

Q. At the same time? A. Yes, sir.

Q. What other businesses?

A. The timber business.

Q. Is that all?

A. No. There was the Spokane Orchards.

Q. Is that all?

A. Some mining interests.

Q. Where were those mining interests, and what were they? A. Why, in the Elk City District.

Q. What mining interests there?

Mr. GORDON.—I object to that on the ground that there was nothing inquired into about that on the examination in chief, and it is not proper cross-examination.

WITNESS.—I don't know that I would be compelled to answer that question.

Mr. BABB.—Q. What were the names of the claims and who were your partners, if any? [2090—1760] A. I decline to answer.

Q. Why do you decline to answer that?

A. Well, it leads to a proposition, to other matters that isn't relative to the matter under consideration.

Q. Well, that is no ground—that it just leads to other matters.

A. Well, it may lead on to matters that—

Q. —that might show where some of the money of the bank went that you are charged with having misappropriated?

Mr. GORDON.—I object to that—

(Testimony of C. W. Robnett.)

Mr. BABB.—Q. Is that the ground that you claim your privilege on; that it may incriminate you in the matter of a violation of the National banking laws?

A. It may.

Q. Is that it? A. It may.

Q. Where else did you have mining interests?

A. That's all—why, only a little interest in Coeur d'Alene.

Q. Didn't you send some fellow down to Mexico once on a mining expedition? A. No.

Q. You put up some money for it?

A. I loaned a fellow some money.

Q. You loaned them some money? A. Yes, sir.

Q. You was taking an interest in a mining scheme down there, wasn't you? A. No, sir.

Q. You investigated it?

Mr. GORDON.—I object to that, on the ground that it is not proper cross-examination. The matter as to which inquiry is being made was [2091—1761] not gone into in the examination in chief, and it is irrelevant, incompetent and immaterial.

WITNESS.—I didn't investigate it, no more than he had made reports on it, or on Mexico in general. I didn't know but what I might be interested in it in time.

Mr. BABB.—Q. What was the name of this Mexican? A. Senor Borneo.

Q. Senor Borneo? A. Yes, sir.

Q. How much money did you spend on that thing?

Mr. GORDON.—The same objection will run to all this class of questions.

(Testimony of C. W. Robnett.)

WITNESS.—I think I loaned him perhaps \$30.00 or \$40.00.

Mr. BABB.—Q. That is all you spent on that thing? A. Yes, sir.

Q. Then, wasn't you interested in a mining scheme up in Alaska?

A. I have got a little stock in a mine up there.

Q. What? A. A little stock in a mine up there.

Q. What was the name of that corporation or project?

A. I don't recall. The stock didn't cost me anything.

Q. Did you spend any money on that project?

A. No, sir.

Q. Did you see a man named Kelsey, connected with that project?

A. No, sir, not to my knowledge.

Q. Not in any way? What was the name of somebody connected with that?

Mr. GORDON.—I object to that on the ground that it is not proper cross-examination.

WITNESS.—I decline to go into that any further.
[2092—1762]

Mr. BABB.—Q. On the ground that that might incriminate you in connection with charges pending against you for a violation of the National banking laws? A. It might.

Q. Didn't you also have an iron ore project over in Idaho? A. Where?

Q. In Idaho—an iron ore project?

A. Not to my recollection.

(Testimony of C. W. Robnett.)

Q. What was the mineral scheme you had with Joe Schultz's brother? I don't know his name.

A. Dan. Schultz?

Q. Yes. A. Asbestos.

Q. Oh—asbestos? That's right. Where was that?

A. On the Lolo.

Q. How much money did you spend in there?

A. I don't remember—a few dollars.

Q. As much as \$10.00, do you think?

A. Oh, maybe as much as \$40.00.

Q. You don't think it exceeded \$40.00?

A. No, I don't think it did—\$40.00 or \$50.00.

Q. Then, the Spokane Orchards, you mentioned some project of that kind; what was there as to that?

A. I decline to make any statements in regards to the Spokane Orchards.

Q. Was that an irrigation scheme? A. It was.

Q. The scheme was large in its extent, wasn't it?

A. It might have been.

Q. When was that going on?

Mr. GORDON.—I object— [2093—1763]

WITNESS.—I decline—

Mr. GORDON.—I wish to make an objection here, on the ground that it is not proper cross-examination, and the matters inquired of were not gone into in the examination in chief.

Mr. BABB.—Q. You decline for the reason that it might incriminate you in the matter of charges for a violation of the National banking laws?

A. Yes, sir.

Q. You had a thermal or hot-water project over in

(Testimony of C. W. Robnett.)

Oregon, didn't you, somewhere? A. Yes, sir.

Q. What place? A. Vale.

Q. About what time was that going on?

A. Along in the summer of 1907.

Q. And then you had a land and irrigation scheme there, too, didn't you? A. Yes, sir.

Q. Was that about the same time? A. Yes, sir.

Q. How much money did you spend in that thing?

A. I decline to answer.

Q. For the same reasons given heretofore?

A. Yes, sir.

Q. Then, wasn't you in a farming and livestock business—

Mr. GORDON.—I object to that on the ground that it is not proper cross-examination.

Mr. BABB.—Q. —up in Nez Perce or Idaho County, or a project of some degree of development or prospect?

A. No; I wasn't interested in it no more than I assisted a party with a small amount of money.
[2094—1764]

Q. How much did you spend in that thing?

A. I decline to answer.

Q. For the reasons given heretofore?

A. Yes, sir.

Q. Now, give a complete itemized list of everything that was in those boxes in the bank.

A. I don't know as I can.

Q. Didn't you have a mining project over in Montana?

Mr. GORDON.—Objected to on the ground that

(Testimony of C. W. Robnett.)

it is not proper cross-examination, and the matter was not inquired of of the witness in the examination-in-chief, and it is incompetent, irrelevant and immaterial.

WITNESS.—No, sir.

Mr. BABB.—Q. You have now, haven't you?

A. No, sir.

Q. You have had an interest in one over there?

A. A mining proposition?

Q. Yes—a land proposition, or any other kind of a proposition over there?

Mr. GORDON.—I object to that, as it is not a proper question to ask, and it is not proper cross-examination.

WITNESS.—I was interested in trying to promote a proposition over there.

Mr. BABB.—Q. Well, let's see—Columbia Falls?

A. Columbia Falls, yes, sir.

Q. What was that proposition?

A. Well, it was a proposition of trying to place a certain amount of land under irrigation, and there was nothing done with it.

Q. Well, now, you have mentioned here a great many projects that you have been interested in, in addition to those which you stated were all your interests outside of the bank, as I have mentioned them to you from time to time, and I will ask you in a general way now if I have refreshed [2095—1765] your recollection in any way that will enable you to tell any other projects in addition to those which I have called your attention to, which you

(Testimony of C. W. Robnett.)

did not remember in the first instance?

A. No, sir, I don't recall any.

Q. You don't recall anything now other than those you mentioned yourself and those that I have brought to your attention? A. No, sir.

Q. That you have ever had any money invested in? A. No, sir.

Q. In any way, at any time? A. No, sir.

Q. Now, I will ask you to give a complete list of the matters as near as you can that you had in those boxes at Lewiston, in the Lewiston National Bank the last time you ever examined them.

A. I decline to do so.

Q. Well, you didn't decline when the counsel for the Government here asked you.

A. Well, I mentioned those items that I spoke of, but beyond that I decline to give a complete statement. Those that I mentioned, of course, I told.

Q. You decline to mention any items other than those you mentioned in response to the counsel for the Government? A. Yes, sir.

Q. How does it come that you are not afraid of incriminating yourself in your responses to the Government as much as your responses to the defense?

A. Well, there were other items that I don't care to mention at this time, and I claim my constitutional privilege.

Q. You will do things for the Government, then, that you would not do for the defense in testifying?

A. I would not have made those statements for the Government at the present time. [2096—1766]

(Testimony of C. W. Robnett.)

Q. Which statements?

A. Those mentioning the other.

Q. The other items in there?

A. The other items, or the amounts in different transactions which I have refused to answer.

Q. Well, I won't ask you, then. Well, I won't waive the question I put—I rely on it—but I will ask you in addition now to mention some items in there. There were certainly some in there that would not implicate you, wasn't there, besides those that the Government mentioned?

A. Why, there might be, but I don't recall all that was in there.

Q. Well, can't you think of a single item in there besides what the Government mentioned that would not incriminate you?

A. Oh, there was perhaps a good many in there, but I don't recall just what they were.

Q. Well, just take a little time, now, and collect your thoughts, and see whether there was a single item in those boxes besides what the Government asked you about that you think would not incriminate you that you can tell about.

A. I don't recall any.

Q. Were the boxes pretty well filled?

A. Yes, sir.

Q. Well, you told the Government here in your direct examination that you had a lot of your personal papers in there? A. Yes, sir.

Q. Pertaining to your personal business transactions? A. Yes, sir.

(Testimony of C. W. Robnett.)

Q. Such as checks and drafts—

A. I didn't mention any drafts.

Q. —and other matters?

(No further answer.)

Q. Well, now, everything that was in there was your personal [2097—1767] papers, was it?

A. Yes, sir,—

Q. And having mentioned those for the Government—

A. —as far as I recall at the present time.

Q. And having mentioned those for the Government, then I presume you are willing to testify concerning those that were your personal papers for the defendants, are you not?

A. Not at the present time. I decline to make any further statement in regards to the balance of the papers.

Q. I will ask you if you remember whether there was a draft in one of those boxes, on the Continental National Bank—a draft of the Lewiston National Bank on the Continental National Bank of Chicago, in your handwriting except the signature, drawn originally for \$5.00, and raised in your handwriting to \$5,000.00?

Mr. GORDON.—Objected to on the ground—

Mr. BABB.—Q. —which had been paid, and was returned to the Lewiston National Bank?

Mr. GORDON.—Objected to on the ground that it is not proper cross-examination, the matter not having been gone into on the examination-in-chief.

WITNESS.—I don't know as there was.

(Testimony of C. W. Robnett.)

Mr. BABB.—Q. You don't know whether there was or not?

A. I don't remember anything about it.

Q. Do you remember of there ever being such a draft as that? A. I decline to answer.

Q. For the same reasons stated above?

A. Yes, sir.

Q. You say you don't remember whether there was such a draft as that in the boxes, or either of those boxes?

A. I don't recollect. [2098—1768]

Q. The proper place for that draft would be in the vaults of the bank, wouldn't it?

A. I presume so.

Q. It would belong to them, wouldn't it, if it had been drawn in their name and sent out of their money paid out of their account by the Continental National Bank, it would belong to the Lewiston National, wouldn't it?

A. It would belong with the cancelled vouchers, yes, sir.

Q. It wouldn't belong in that box of yours, would it? A. No, sir.

Q. You say you can't remember whether there was any such a draft as that in existence?

A. I don't recall whether there was such a draft as that in there or not.

Q. And you don't recall whether there was such a draft, either, as I understand you?

A. I decline to answer.

Q. You decline to answer that? A. Yes.

(Testimony of C. W. Robnett.)

Q. Why? Because that might incriminate you in connection with these charges of a violation of the National banking laws? A. It might.

Q. I will ask you if there was in either one of those boxes a telegram from the Continental National Bank to the Lewiston National Bank, asking in what amount they should pay that draft?

A. I don't know as there was.

Q. Did you ever see such a telegram?

A. I decline to answer.

Q. And for the same reasons you have stated before? A. Yes, sir.

Q. You say you don't know whether there was such a telegram in one of those boxes? [2099—1769] A. No, sir, I don't.

Q. Did you ever see a telegram that was sent to the Continental National Bank in answer to such a telegram? A. I decline to answer.

Q. For the same reasons? A. Yes, sir.

Q. Did you ever talk with any banker in Spokane over the phone concerning that draft?

Mr. GORDON.—I make the same objection.

WITNESS.—Not to my recollection.

Mr. BABB.—Q. Did any banker in Spokane ever talk with anyone else in the Lewiston National Bank over the phone about that draft?

A. I decline to answer.

Q. For the same reasons? A. Yes, sir.

Q. Did that draft pertain to these land transactions? A. I decline to answer.

Q. Now, you answered in chief here concerning

(Testimony of C. W. Robnett.)

checks and drafts and things in there pertaining to these land transactions, didn't you?

A. I did, sir.

Q. Well, now, I simply ask you whether this draft had anything to do with these land transactions?

A. I decline to answer.

Q. For the same reason given before?

A. Yes, sir.

Q. I will ask you if there was either one of those boxes a draft of the Lewiston National Bank for \$5,000.00, drawn in favor of J. D. Gulick?

A. Not to my recollection.

Q. Do you know whether there was ever such a draft as that?

A. I decline to answer. [2100—1770]

Q. For the same reason given above?

A. Yes, sir.

Q. If there was such a draft, it belonged in the vaults of the Lewiston National Bank rather than your private box, didn't it?

A. It belonged among the cancelled drafts after they were returned, if there was such a draft.

Q. Did that draft pertain to these land transactions, or to the Spokane Orchards, or what?

A. I decline to make any statement.

Q. For the same reasons as given above?

A. Yes.

Q. You spent a good deal of your time in Spokane, didn't you, along in '07 and '08?

Mr. GORDON.—The same objection.

WITNESS.—I decline to answer.

(Testimony of C. W. Robnett.)

Mr. BABB.—Q. Didn't you change your residence, really, to Spokane, during one of those years?

A. I decline—

Q. Or early in '09?

(No answer.)

Q. Didn't you acquire a residence here, with an automobile barn that cost you about \$10,000.00 to \$15,000.00? A. I decline to answer.

Q. In '07 or '08? A. I decline to answer.

Q. How much did you spend on this Spokane Orchards project? A. I decline to answer.

Mr. GORDON.—The same objection.

Mr. BABB.—Q. Well, now, you told me the amounts as near as you could remember them of several of these mining projects, one of \$30.00 and another [2101—1771] of \$40.00. Do you think that this might incriminate you—this answer concerning the Spokane Orchards project, whereas the others might not? A. I decline to answer.

Q. I will ask you to state whether you did not, on the 22d of April, 1909, make a statement in writing showing the sum of \$91,715—

A. I decline to answer.

Q. —that you had taken from the funds of the Lewiston National Bank and invested in the Spokane Orchards project, giving the various projects in which you had invested it, and the amounts respectively? A. I decline to answer.

Mr. GORDON.—The same objection.

Mr. BABB.—That is all I have.

Mr. TANNAHILL.—Q. Mr. Robnett, where are

(Testimony of C. W. Robnett.)

you living at the present time?

A. Spokane.

Q. How long have you lived in Spokane?

A. Since about the middle of March of this year.

Q. And where did you live prior to that time?

A. Lewiston, Idaho.

Q. How long did you live there?

A. About 18 years.

Q. What caused you to change your residence from Lewiston to Spokane? A. Business.

Q. What class of business were you engaged in?

A. I wasn't engaged particularly in any business when I came up here. I am in the real estate business now.

Q. What class of real estate do you handle?

A. Why, city—county—all kinds.

Q. Is there any particular real estate business you are handling now? [2102—1772]

A. Yes, sir.

Q. What business? What real estate?

A. Why, city property, on a commission basis; country farms; a regular general real estate business.

Q. Have you been interested in any real estate as owner since you came up here? A. No, sir.

Q. Was you before you came up here?

A. Yes, sir.

Q. What real estate? What business? What lands? A. I decline to answer.

Q. What reason do you give for declining to answer?

(Testimony of C. W. Robnett.)

A. For it might lead on to matters to incriminate.

Q. You think you would be liable to incriminate yourself by telling what real estate you have been interested in since you have been in Spokane?

A. Not this last time, no, sir.

Q. Well, that is what I asked you about.

A. You asked me prior to my coming up here.

Q. Well, I am asking you now since you moved up here?

A. I haven't been interested in any since, as owner.

Q. You haven't been interested in any since you moved up here?

A. That is, any new real estate investment.

Q. Well, what real estate was you interested in before you moved up here to Spokane?

A. I decline to answer.

Q. Was you interested in any real estate before you moved to Spokane? A. I decline.

Q. Now, about what date was it you moved to Spokane?

A. Somewheres along about the middle of the month of March of this year. [2103—1773]

Q. Of 1910? A. Yes, sir.

Q. Now, you put in a great deal of time in Spokane before you moved up here, did you not?

A. I decline to answer.

Q. And where was you before you moved to Spokane? A. My home was in Lewiston.

Q. Well, where was you personally during this time? A. In different places.

(Testimony of C. W. Robnett.)

Q. Mention some of them.

A. I decline to make any mention of all the places.

Q. You decline to mention where you was? You decline to mention where you was from July, 1907, to March, 1910, the time you moved to Spokane?

A. Do I decline, you say?

Q. Yes. A. Yes, I decline.

Q. Now, Mr. Robnett, you testified in the case of the United States against William F. Kettenbach, George H. Kester and William Dwyer, numbered 1605, Circuit Court of Appeals number, wherein they were tried in the month of May and June, 1907, charged with conspiracy to defraud the United States, in which was involved the identical lands that is involved in this controversy, did you not?

A. Yes, sir.

Q. And you gave your evidence at that time, and it was as a witness for the defendants?

A. I did.

Q. And did you testify more than once?

A. For the defendants?

Q. Yes.

Mr. GORDON.—You mean at more than one trial?

Mr. TANNAHILL.—Yes, at more than one trial?
[2104—1774]

WITNESS.—No; just the one trial at Moscow.

Q. You were tried yourself at one trial in Moscow? A. Yes, sir.

C. And you was convicted of the offense of subornation of perjury, was you not? A. Yes, sir.

(Testimony of C. W. Robnett.)

Q. And that was immediately prior to the time, or that was at a term of court immediately prior to the time that you testified for the defendants, in the case of the United States against Kester and Kettenbach and Dwyer, was it not? A. Yes, sir.

Q. And I believe you testified, in response to Mr. Babb's questions, that your evidence given at that trial was almost directly opposite to the evidence you are giving now, and given upon this trial?

A. Yes, sir.

Q. Now, when did you conclude to change your evidence? A. I decline to answer.

Q. You decline to answer that question?

A. Yes, sir.

Q. And who has told you to decline to answer that question?

A. No one has told me to decline to answer that particular question.

Q. No one has told you to decline to answer any particular question?

A. Not that particular question. Miles Johnson, my attorney in the bank matter, has told me to decline.

Q. And Miles Johnson is also Assistant United States Attorney, is he not? A. No, sir.

Q. He has been?

A. He may have been at times, yes, sir.

Q. And he assisted Mr. Gordon in the prosecution of the defendants [2105—1775] at Boise, and when this case was retried at which you said you testified as a witness for the defendants, which was tried in March, 1910, did he not?

(Testimony of C. W. Robnett.)

A. Yes, he assisted in the case.

Q. And was entered as counsel in that case?

A. Yes, sir.

Q. And at that particular time he was your attorney?
A. In the bank matter.

Q. In the bank matter, and in which you was charged with appropriating a large sum of money from the Lewiston National Bank?

A. I decline to answer.

Q. Well, you have said that you was under indictment?
A. Yes, sir.

Q. You have already testified to that?

A. Yes, sir.

Q. And it is that particular indictment that Miles Johnson is your attorney in, is it not?

A. Yes, sir.

Q. And did Miles Johnson tell you to decline to answer any questions relative to any reason why you changed your evidence and concluded to testify for the Government?

A. Anything that could refer to the bank matter, or any other reason.

Q. Then, by reason of the fact that you concluded to change your evidence from what you gave it in the former trial of the defendants, William F. Kettenbach, George H. Kester and William Dwyer—that has relation to the bank matters, has it not?

A. As I have testified in Boise. I answer that question as I answered it in Boise.

Q. Answer it again.

A. I agreed to come over and testify for the Gov-

(Testimony of C. W. Robnett.)

ernment to the facts in the case provided the matter relative to the bank was given an [2106—1776] impartial presentation before the grand jury at Moscow.

Q. And you wanted it presented to the grand jury your way?

A. No, not in my way; I wanted it presented in a way that was impartial.

Q. And you wanted the opportunity to go before the grand jury and testify, didn't you?

A. Yes, sir.

Q. And that was one of the conditions?

A. Yes, sir.

Q. And you knew at that time that it would invalidate any indictment against you, didn't you?

A. No, sir, I didn't, and I don't know that it would.

Q. Now, you also wanted as one of the conditions that Mr. Gordon would indict Kester and Kettenbach and Frank W. Kettenbach, wasn't it?

A. That he would indict them?

Q. Yes.

A. No; there was nothing of the kind. I didn't know whether they would be indicted or not. I couldn't tell what the grand jury was going to do.

Q. Well, you knew pretty well what the grand jury was going to do, didn't you?

A. No, sir, I didn't; I had no idea what the grand jury was going to do.

Q. Well, you had no idea that you would be indicted, did you?

A. I didn't know but what I might.

(Testimony of C. W. Robnett.)

Q. You had already been bound over, hadn't you?

A. Yes, sir.

Q. And on a complaint sworn to by Frank W. Kettenbach? A. Yes, sir.

Mr. GORDON.—I object to that. The record will show that.

Mr. TANNAHILL.—Q. And Frank W. Kettenbach and William F. Kettenbach were very [2107—1777] much interested in your prosecution, weren't they? A. They appeared to be.

Q. And one of the conditions that would induce you to testify for the Government and induce you to change your evidence from what it was before, was that Frank W. Kettenbach and William F. Kettenbach (who were prosecuting you for embezzling a large sum of money from the Lewiston National Bank) would be indicted also?

A. Why, I never specified it that way, sir.

Q. Well, that is in effect what you wanted, isn't it?

A. I wanted the matter presented impartially.

Q. And your theory of it was, and your opinion and belief was, that you could succeed in getting these men indicted, wasn't it?

A. If there was any indictments found.

Q. If you was indicted, you wanted them indicted, too? Is that right? A. Yes, sir.

Q. And you knew that if you could succeed in getting William F. Kettenbach, Frank W. Kettenbach and George H. Kester indicted, that you would have an easier defense, didn't you?

A. I don't know about that.

(Testimony of C. W. Robnett.)

Q. Now, do you wish to be understood as swearing that you didn't think that?

A. I wasn't going to—all I wanted was an impartial presentation of the facts.

Q. Now, Clarence, answer my question, and tell the truth about it; come through with it.

A. Well, I have told you the facts, that I wanted an impartial presentation of the matter.

Q. Now, you knew very well that if you could get Kester and Kettenbach and Frank W. Kettenbach indicted with you that it would be easier for you to make a defense, didn't you?

A. Well, I wouldn't have to stand alone. [2108—1778]

Q. Well, it would be easier for you to make your defense; is that right? A. I presume so.

Q. And then that was one of the conditions under which you made your promise to go over and testify for the Government; is that right?

A. An impartial presentation of the matter before the grand jury.

Q. Yes—and that Kester and Kettenbach and Frank W. Kettenbach would be indicted?

A. No; there wasn't any mention made of those people being indicted.

Q. But it was your intention to have them indicted when you was talking about changing your evidence, wasn't it?

A. Well, if the grand jury seen that way about it, yes.

Q. Yes, and you proposed to place the case in such

(Testimony of C. W. Robnett.)

a way and be in such a condition yourself that the grand jury would indict them, didn't you?

A. I didn't know what the grand jury would do.

Q. Well, but you know what you expected them to do, don't you?

A. I expected them to deal with the facts as they were.

Q. And you expected them to indict them, didn't you? A. If they indicted me.

Q. Well, you expected to be indicted yourself, didn't you? A. I didn't know.

Q. Now, didn't you know that you would be indicted?

A. Why, it was very evident that I would.

Q. And didn't you testify before the grand jury yourself?

A. I decline to go any further in regards to that.

Q. Well, you was before the grand jury, wasn't you?

A. I decline to make any further statements in regards to it.

Q. Now, it was one of the understandings with the prosecuting officers in charge of this case, that you would be permitted to go before the grand jury and testify, wasn't it? [2109—1779]

A. Well, that is what I asked for.

Q. That is what you asked for? A. Yes, sir.

Q. And they told you that they would see that you got it; is that right?

A. They would see what could be done.

Q. Well, you did go before the grand jury and tes-

(Testimony of C. W. Robnett.)

tified, and succeeded in having Frank W. Kettenbach and George H. Kester and Will Kettenbach indicted, before you testified for the Government, didn't you, at Boise?

A. They were indicted; I don't know whether I did it or not.

Q. And your evidence helped to indict them; you know that, don't you? A. Perhaps.

Q. And that was pursuant to your understanding and arrangement with the prosecuting officers; is that right?

Mr. GORDON.—Make that a little clearer, will you? What was the understanding, Mr. Tannahill?

WITNESS.—Read that question over.

The Reporter repeated as follows:

“Q. Well, you did go before the grand jury and testify, and succeeded in having Frank W. Kettenbach and George H. Kester and Will Kettenbach indicted, before you testified for the Government, didn't you, at Boise?

“A. They were indicted; I don't know whether I did it or not.

“Q. And your evidence helped to indict them; you know that, don't you?

“A. Perhaps.

“Q. And that was pursuant to your understanding and arrangement with the prosecuting officers; is that right?”

WITNESS.—That they should be indicted?

Mr. TANNAHILL.—No; that you would go before the grand jury and [2110—1730] present your evidence to the grand jury? A. Yes.

(Testimony of C. W. Robnett.)

Q. Now, then, they also took you into consultation and asked you about what sort or class of evidence you would give, didn't they, before they made you this promise? A. No, sir.

Q. How? A. No, sir.

Q. They didn't talk about what kind of evidence you would give against these men in the land cases?

A. No, sir.

Q. Never said anything about it at all?

A. No, sir, any more than to ask me if I would testify.

Q. They asked you if you would testify?

A. Yes, sir.

Q. Who asked you if you would testify?

A. Mr. Watts.

Q. Now, when was the first conversation you had with Mr. Watt regarding it?

A. It was in—well, I presume along about the 8th to the 10th of July.

Q. Where was that conversation held?

A. One conversation was held in the room—one room in the Lindell Block on the third floor, and also in a room in the Halliday Hotel.

Q. This is the same Mr. Watt who is an officer of the Government and assisting Mr. Gordon in the trial of these cases, is he not? A. Yes, sir.

Q. How did you come to meet him?

A. He hunted me up.

Q. He hunted you up? A. Yes, sir.

Q. How did you first know that he was hunting you? [2111—1781]

(Testimony of C. W. Robnett.)

A. Why, he called at the office while I was out, and stated that he would call again.

Q. Was you there at that time?

A. I wasn't there when he first came in. He came back again while I was out again, and he was there when I came back the second time.

Q. What did he have to say then?

A. He said he wanted to talk with me, and have a little private conversation, and I told him he would have to state his business before I would talk with him.

Q. And what did he say?

A. He came across the room to where I was sitting and said he was a Government Special Agent, and he would like to talk to me in regards to the timber matter. I told him that I would meet him and talk with him at any time. He wanted me to meet him that evening, but I told him that I couldn't, that I had other arrangements for the evening.

Q. What else did he say?

A. And the arrangements for the meeting were made for the next morning, either nine or ten o'clock, at the Halliday Hotel, that being Sunday.

Q. What was said in that conversation?

A. Why, he stated that the Government would like to have me testify for them and tell them the facts as I knew them in regards to the timber transactions; that they were going to open up the cases and try them.

Q. Well, what else was said?

A. I don't know what all took place, but we talked backwards and forwards, and I told him I would let

(Testimony of C. W. Robnett.)

him know what I would do on my return from Montana.

Q. Now, how long were you with Mr. Watt at that time?

A. Oh, perhaps in the neighborhood of an hour and a half.

Q. Was there anything else? You certainly talked about something [2112—1782] else. You certainly had some other conversation regarding this matter in that time.

A. Well, we talked in regards to other matters, and general conversation. I told him that I would make no statements in regards to what I would do until I returned, and I would meet him then in Lewiston, somewhere about the 17th or 18th of the month.

Q. Now, then, in that conversation Mr. Watt wanted to know if you wasn't indicted on a number of counts in relation to timber transactions, did he not?

A. Yes; he spoke about certain transactions—certain indictments pending against me, and I told him I didn't have any fears of the timber transaction.

Q. And he asked you if you was not also indicted in relation to the bank matters, too, did he not?

A. Indicted?

Q. Or, no; he wanted to know if you were not under arrest, or under charge—if a complaint wasn't filed against you in relation to the bank matters?

A. There was some mention made of the bank matters.

Q. And you told him that you was? A. Yes, sir.

(Testimony of C. W. Robnett.)

Q. Now, didn't he say that you are credited with knowing a great many things different from what you testified? A. Yes, sir.

Mr. GORDON.—Now, that referred to the former cases, did it?

Mr. TANNAHILL.—Yes.

Mr. GORDON.—It referred to the former conspiracy case, you are referring to now?

Mr. TANNAHILL.—Yes, the timber matter.

Q. Now, tell us something else that was said in that conversation.

A. I told him that it might be true that I knew a great deal [2113—1783] more than I stated, but I wasn't at liberty and wouldn't make any statement at that time, until my return from Columbia Falls, and I would take the matter up with a friend and see what he would advise.

Q. Well, now, when Mr. Watt first began to talk to you, or suggest to you that he wanted to have a conversation with you, didn't you tell him that you wanted to know something about what protection you was going to have if you talked to him?

A. I asked him that question, what proposition or condition that the Government could make on a thing of that kind, or whether it would be permissible, and he said it was not.

Q. Well, now, he told you in the first instance that you are accused of certain matters in relation to the bank transactions? He told you that; he made the first suggestion that you was accused?

A. Yes; he knew that.

Q. And didn't he say to you there, "You are not

(Testimony of C. W. Robnett.)

going to stay with these boys now that they have thrown you down," did he not?

A. Why, he stated that he didn't see why I should. I told him that I wasn't just at the present time—

Q. Well, just tell us what was said about that.

A. He wanted to know if I was going to still stay with them, and I told him I didn't know, I couldn't say, I hadn't made up my mind to do anything else, and that I would if I decided anything further or changed my attitude that I would let him know.

Q. Now, do you think of anything else that occurred there at that time?

A. No, not at that conversation.

Q. Well, didn't he tell you that he was not in a position to tell you what protection you would have or he was able to give you, but that he would investigate and see?

A. No; he stated that he was not in any position to do that, but before I made up my mind what to do to consult an attorney and act under his advice.
[2114—1784]

Q. Now, who did he tell you to consult?

A. He didn't tell me to consult anybody.

Q. Now, didn't you ask him what position it would place you in relation to the bank matters, in case you testified for the Government in the land matters, in that conversation?

A. Yes, I may have asked him that question.

Q. And what did he tell you?

A. Why, he told me it would be—it might lead to where there could be—where the matter could be pre-

(Testimony of C. W. Robnett.)

sented in a different way, and I could go before the grand jury and tell my testimony—or evidence.

Q. And he told you that he would consider, too, did he not? A. He would consider what?

Q. He would consider the question of the position that you would be placed in—what he could do for you in the meantime?

A. No, I don't know as he did. He said he wasn't in any position to state what could be done at all, but for me to consult some attorney and act under his advice.

Q. Well, now then, he told you that he was a representative of the Department of Justice, did he not?

A. He did—a Special Agent.

Q. And he told you there there were people above him that he would have to report to?

A. I don't know as he stated that at that time.

Q. Well, he told you that there were people above him?

A. Oh, yes; he said—I knew that there were people above him.

Q. And when you asked him about this protection that you wanted, he told you that he would take that matter up and see what could be done, did he not? A. Of protection?

Q. Yes.

A. Oh, he said the Government couldn't grant—wasn't in any position to offer any protection.
[2115—1785]

Q. Well, he told you that he would take that matter up when you had decided what you would do, did he not? A. The matter of protection?

(Testimony of C. W. Robnett.)

Q. Yes.

A. No, he didn't. The only protection—the only thing I asked—that is, I asked if there was such a thing as that could be made, and he said there could not, and then I told him that I might come over on the grounds of having an impartial presentation of the matter before the grand jury.

Q. Well, now, did you not testify at Boise, on the trial of Kester, Kettenbach and Dwyer: “Did he say anything about his being able to get authority to make a statement that was binding on the Department of Justice?” “Answer. He said he would take that matter up with me again when I decided what I would do.” Now, didn't you so testify?

A. I thought you meant he was going to take it up with somebody else.

Q. No—he was going to take it up with you again?

A. Well, he said he would talk with me in regards to that when I made up my mind what I was going to do.

Q. Now, did this protection you was talking about relate to the land matters, or did it relate to the bank matters? A. What?

Q. This protection that you was talking about that you wanted, did that relate to the land matters, or did it relate to the bank matters?

A. It related to the bank matters.

Q. You wasn't afraid of any transactions in relation to the land matters, were you?

A. No, not at that time.

Q. Now, when did you have another conversation

(Testimony of C. W. Robnett.)

with Mr. Watt, or Mr. Smith, or anyone else, regarding it?

A. About the 17th or 18th of July. [2116—1786]

Q. And where did that conversation take place?

A. In one of the rooms of the Weisgerber building.

Q. First, Mr. Robnett, in this conversation with Mr. Watt, isn't it a fact that Mr. Watt told you that he was looking for you, and that the Government wanted you, and wanted you bad?

A. He said he was looking for me, and that the Government would like to have my testimony.

Q. Well, didn't he say they wanted you, and wanted you bad—wanted you and wanted you bad?

A. I don't know that he used that word "bad." He said they would like my testimony very much; they needed it.

Q. They needed it in their business, eh?

A. Well, they needed it to bring out the facts in the timber matter.

Q. Now, you do remember of his saying that the Government needed you and need you bad?

A. I don't remember his using the word "bad."

Q. But he did say they wanted you; is that right?

A. Yes; he said they would like to have my evidence.

Q. And what did he say they were willing to do to get it?

A. Why, he didn't say that they was willing to do anything, only I asked him the question, as I stated before, I asked in regards to if any protection could be granted, and he said no, there couldn't; that the

(Testimony of C. W. Robnett.)

Government couldn't enter into any agreement of that kind.

Q. Well, he didn't tell you that you would receive any favors, or anything of that kind, did he?

A. No, I don't know that he said I wouldn't. He said they couldn't entertain any agreement, and they couldn't hold out any inducement.

Q. The fact of the matter is you know that if the prosecuting officers wanted to favor you they could, and you knew that then?

A. Well, I don't know. They might and they might not. There [2117—1787] was nothing binding.

Q. And you knew if the officers wanted to dismiss those charges against you they could do it?

A. Why, it is in their jurisdiction, I presume.

Q. And you were simply sparring to see what kind of protection you could get, wasn't you?

A. Why, that's natural.

Q. And you was driving the very best bargain with the Government you could, wasn't you?

A. Why, I don't know.

Q. Well, it was a business proposition with you, wasn't it?

A. It might have been in a way, yes.

Q. And you have made the very best bargain with the prosecution and with the Government that you can, haven't you?

A. The only bargain that I made with the prosecution is what I have already testified to—an impartial presentation of the matter before the grand jury.

(Testimony of C. W. Robnett.)

Q. Well, but, Mr. Robnett, I don't care anything about what was said right out, or anything of the kind; but I am asking about the bargain that you made with them. It was the very best one you could make, wasn't it?

Mr. GORDON.—We object to that, on the ground that there has nothing been said about any bargain having been made with anybody.

Mr. TANNAHILL.—Q. You have made the very best deal with them that you can make, haven't you?

A. I don't know as I have made any deal—no deal except what has been carried out.

Q. Well, you have done the very best with them you could, haven't you?

A. In what respect? What do you mean?

Q. In every respect—to lighten your prosecution just as much as you can? [2118—1788]

A. I have got no promises of anything from the Government any more than what has already been carried out.

Q. Now, I was satisfied, Clarence, if I asked you that question you would say you didn't, but I didn't ask you that question; I am asking you this question: Haven't you made the very best deal with them that you can?

Mr. GORDON.—I object to that, on the ground that he said he didn't make any deal.

Mr. TANNAHILL.—Q. Well, you have said you didn't make any deal.

A. I don't know as I have made any deal, except what I have just testified.

(Testimony of C. W. Robnett.)

Q. Well, you have already testified, though, that there was an agreement that it was to be presented in an impartial manner and you was to go before the grand jury and testify, and while it wasn't talked over you had it in your mind to cause the indictment of Kester, Kettenbach and Frank W. Kettenbach. Now, these deals were made, and following the whole thing from start to finish, the promises that has been made you, and the tacit understanding that you have had, and the protection that you have had from the time you was indicted, and everything of that nature: you have made the very best deal with them that you can, haven't you?

A. Well, I don't know whether you would consider that matter of my asking that the matter be presented being a deal. If you call that a deal, why that is all the deal there is to it.

Q. And they have given you the protection they have promised you right along, haven't they?

A. What protection?

Q. Any protection that they have promised you. Anything they have promised you they would give you they have given you, haven't they?

A. I don't know that I was promised any protection.

Q. Well, anything they have promised you, whether it is protection [2119—1789] or what it is, they have carried it out, haven't they?

A. I don't know as you would call that a promise.

Q. Well, they have carried out everything they promised you, haven't they?

(Testimony of C. W. Robnett.)

A. Yes; I got the matter presented before the grand jury.

Q. And any understanding you have had with them they have carried it out?

A. Well, that is all I asked, and all they stated they would try and do.

Q. Well, you asked to have Kester and Kettenbach and Frank W. Kettenbach indicted, and the Government indicted them for you, didn't they?

Mr. GORDON.—I object to that, as there is no evidence to that effect.

WITNESS.—I never asked to have them indicted.

Mr. TANNAHILL.—Q. Well, you testified before the grand jury?

A. Well, I testified to the facts; but I didn't come out and ask them to indict them.

Q. Now, you testified a while ago that you wanted it presented in a certain way, and that you had it in your mind to cause the indictment of Kester, Kettenbach and Frank W. Kettenbach, and that you thought that if you caused their indictment that it would lighten your prosecution. Now, you had that in mind, didn't you?

A. Yes, I thought—I may have had that in mind.

Q. And the Government helped you to indict those men, didn't they?

Mr. GORDON.—I object to that as not proper cross-examination.

WITNESS.—I didn't indict them.

Mr. TANNAHILL.—Q. Well, your evidence helped to do it.

(Testimony of C. W. Robnett.)

A. Well, it might have—the evidence presented before the grand [2120—1790] jury.

Q. And you told them you wanted something to say about the way that was presented?

A. Nothing more than that everything would be presented there, and I would have the privilege of going before the grand jury.

Q. Now, you and Mr. Gordon and Mr. Smith and all of you all talked over the proposition of getting these men indicted before you went before the grand jury, didn't you? A. No, sir.

Q. You simply had a frame-up to get these men, didn't you? A. No, sir.

Q. You never said a word about indicting them?

A. I never talked with Mr. Gordon until I met him in Moscow, and what the results was of the grand jury was never talked over at all.

Q. You never talked it over at all?

A. No, sir, before the grand jury was there.

Q. Well, didn't you go in and take in books there, and help Mr. Gordon work on the books—help him get up evidence against these men?

A. Not Mr. Gordon—I helped Mr. Gray.

Q. And you talked with Gray about it, did you?

A. That was simply getting up certain facts to present before the grand jury.

Q. And those facts, you were getting those together for the purpose of indicting these men, weren't you? A. Presenting the facts as they was.

Q. And that was presenting the facts as they was?

A. Presenting it to the grand jury, and let the

(Testimony of C. W. Robnett.)

grand jury take such action as it would.

Q. And you was trying to get it in such shape that the grand jury would indict them, weren't you?

A. I was trying to get the facts to come out is all.

Q. And that was for the purpose of getting these men indicted? [2121—1791]

Mr. GORDON.—We object to that. The witness has testified at least twenty times that it was not for that purpose.

Mr. TANNAHILL.—And he has testified that it was, too.

Mr. GORDON.—Well, counsel for the defense has testified twenty times that it was for that purpose, and he has been trying to put those words into the witness' mouth, and by talking fast to make it appear that he has testified to that effect. I submit that that is not the testimony of the witness.

Mr. TANNAHILL.—Well, I will submit the record in support of my claim, and take chances on the record.

Q. Now, Mr. Robnett, who else did you talk with over there in Moscow about indicting Kester, Kettenbach, and Frank W. Kettenbach?

Mr. GORDON.—I submit this is not proper cross-examination. He says he has not talked with anybody about indicting either Kester, Kettenbach or Frank W. Kettenbach.

Mr. TANNAHILL.—Who else did you talk with about it?

A. I didn't talk about indicating those people. I talked about getting the evidence.

(Testimony of C. W. Robnett.)

Q. Who did you talk with about getting the evidence?

A. The evidence that was to go before the grand jury—Mr. Smith, Mr. Watts and Mr. Gray.

Q. And who else? A. Perhaps Mr. House.

Q. And who else?

A. Why, very little I said to Mr. Gordon in regards to the evidence that I was going to state.

Q. Did they take a statement from you before you went before the grand jury?

A. Mr. Smith and Mr. Watts took a general statement of the affairs.

Q. They wrote it down, did they? [2122—1792]

A. Yes, sir.

Q. And did you sign it? A. No, sir.

Q. Now, Mr. Robnett, when did you have your next conversation with— You was testifying about something that occurred at Lewiston. When was that?

A. You mean with Mr. Smith and Mr. Watts?

Q. Yes.

A. The first conversation I had there was after I came back from Montana, about the 17th or 18th of March.

Q. Where did that take place?

A. In one of the rooms of Miles Johnson's office.

Q. And who was present?

A. Mr. Smith and Mr. Watts and myself.

Q. What was said in that conversation?

A. They wanted to know—

Q. Now, who wanted to know?

(Testimony of C. W. Robnett.)

A. Mr. Smith and Mr. Watts.

Q. Now, what was said?

A. What I had made up my mind to do, and I told them that I hadn't fully determined yet what I would do.

Q. Well, what else was said?

A. Why, we talked a little over the situation in regards to the timber transactions, and there was nothing very definitely stated that evening.

Q. How is that?

A. There wasn't anything particularly stated that evening.

Q. How long was you talking there?

A. Oh, perhaps an hour, all told—maybe longer.

Q. And what did you talk about all that time?

A. Well, the trip over in Montana, and other matters.

Q. What else did you talk about? [2123—1793]

A. The timber matter. That is practically all, except common—

Q. Well, what did you talk about?

A. Perhaps some of the affairs of the business world at that time.

Q. What did you tell them about the timber matters?

A. I don't recall just what I did tell them. I told them something about the different claims that were in question, that they thought I knew something about, but I made no definite statement.

Q. Well, now, can't you think of anything you told them? You are pretty good on remembering

(Testimony of C. W. Robnett.)

conversations you heard in the Lewiston National Bank, or say you heard.

A. (Laughing.) Well, there wasn't anything there at that time to—that is, in regards to just what I was going to testify to. I hadn't made up my mind.

Q. Notwithstanding the fact that you went there to see these men about getting protection, and notwithstanding the fact that you was under charge then, and grave charges, of embezzling \$137,000.00 from the Lewiston National Bank, that you was under several indictments in relation to timber transactions, and that you had gone there to see these men about these particular matters; yet you say there was nothing occurred to cause you to remember anything that was said?

A. There wasn't anything occurred on account of giving any evidence at that particular time, because I hadn't decided what I was going to do.

Q. Now, you say you was there about an hour. Can you mention anything that was said?

A. Nothing more than the fact that if I did go over to the Government that the statements made by Mr. Watts in Spokane would be carried out, if it was in their power; they would see what could be done in regards to that.

Q. They would see what could be done in regard to that?

A. Yes—having the matter presented—the bank matter— [2124—1794] before the grand jury.

Q. Now, did you tell Mr. Watt anything about that in Spokane?

(Testimony of C. W. Robnett.)

A. Yes; that is one of the things I spoke of up there; having the matter—

Q. You didn't testify to that in Boise, did you?

A. I don't know just exactly what I testified to in Boise in regards to that.

Q. You have thought of that since, haven't you?

A. Well, if that isn't in the testimony there that I gave, perhaps I have.

Q. Now, when did you have another conversation?

A. Why, in the next three or four days. I met them over at their room—in a room over at Mr. Smith's, in the Bollinger Hotel.

Q. Who was there at that time?

A. Mr. Smith and Mr. Watts and myself.

Q. What was said there?

A. I told them that I had decided to—practically decided to go over to the Government in the matter, and I had also spoken to Miles Johnson to represent me in the bank matter.

Q. Who told you to get Miles Johnson to represent you? A. Nobody did.

Q. Who did you first talk with about getting Miles Johnson to represent you in the bank matter?

(No answer.)

Q. I will ask you if you had a talk with any of these Government agents about getting Miles Johnson to represent you before you went to see Miles Johnson?

A. No. I may have—I don't think I had spoken to Mr. Johnson at this time. I said that I was figuring on getting him.

(Testimony of C. W. Robnett.)

Q. Figuring on getting him? A. Yes.

Q. Now, did you tell them that you were figuring on getting him? [2125—1795]

A. Why, yes, I said that I was figuring on getting him, and they said they thought that would be all right; that he would render me good service.

Q. That he was in a position to render you good service? A. That he was—

Q. They told you that he was in a position to render you good service, didn't they?

A. That his knowledge of these matters, and being Prosecuting—Assistant Prosecuting Attorney for the Government of the United States—ex-Assistant Prosecuting Attorney—they thought he would be the proper man.

Q. And that he was in a position to get you protection, if anybody could; is that right?

A. No. When the matter of protection came up they said, "We are in no position to make any statements in regards to that"; that that would be a matter that I would have to speak to my attorney about.

Q. Now, you had had a great many talks with Smith and Watt before this conversation, when it came up in regard to your employing Johnson, had you not?

A. No. There was only those two conversations there; one at Miles Johnson's office, and he was off in the timber at that time.

Q. Now, you say there were a number of conversations you had along there?

A. There were a number of conversations; right

(Testimony of C. W. Robnett.)

after that we had—oh, every once a day or thereabouts for a while we had a conversation.

Q. You were in close consultation with them for a long time? A. Pretty close, yes.

Q. And in those conversations you talked over the question of the bank matters and the timber matters and you gave them some statements in regard to the timber matters? A. Yes, sir. [2126—1796]

Q. And you would also ask them something about what protection you would be able to get? You talked about that frequently, didn't you?

A. No, sir, not frequently, after I had brought it up and found out what could be done, that is all there was. All that I wanted to know was that the matter would be presented before the grand jury.

Q. When you found that they couldn't make you a promise, or an absolute guarantee, then you went to work with them to have the matter presented before the grand jury in a certain way?

A. In an impartial way; yes, sir.

Q. And you talked that over with Miles Johnson, didn't you? A. Yes, sir.

Q. And he told you that that was a pretty good move to make, didn't he?

A. Why, in what particular? Having the matter presented before the grand jury?

Q. Yes. A. Yes; he said that was all right.

Q. And you have followed the advice of Johnson in the matter of making your deals with the Government since that time, haven't you?

A. Deals? There has been no deals made.

(Testimony of C. W. Robnett.)

Q. Well, in any particular—your transactions with the Government officials?

A. That is, the testimony and what evidence I should give in, in regards to the bank matter, has been under Mr. Johnson's advice. Of course, in the timber transactions he has refused to advise me.

Q. Well, you didn't need any advice in regard to that, did you?

A. No. I would go ahead and give my testimony.

Q. Well, you wasn't afraid of anything happening to you in regard to the timber matters, was you?

A. Well, I wasn't worrying about that particularly.

Q. But you have worried some about the bank matters, haven't you? [2127—1797]

A. I decline to answer.

Q. And you have been worrying about the bank matters right along, haven't you?

A. I decline to make any statement.

Q. And the bank matter is one of the things that has induced you to change your evidence, isn't it?

A. Along on the lines that I have stated.

Q. Well, that is one of the things that induced you to go over to the Government and testify for the Government, isn't it? A. In a way, yes.

Q. And it is practically the only thing that has induced you to do it, isn't it?

(No answer.)

Q. Tell the truth about it, Clarence.

A. Why, no, I don't know as it is.

Q. There is other things that induced you to go

(Testimony of C. W. Robnett.)

through? A. Yes. I was—

Q. But the bank matter was the moving spirit, wasn't it?

Mr. GORDON.—Let him answer the question, please.

WITNESS.—I wanted to get this matter straightened up. I am sick and tired of the proposition.

Mr. TANNAHILL.—Q. You got sick and tired of it immediately after you was charged with embezzling a large sum of money from the Lewiston National Bank, didn't you? A. Immediately afterwards?

Q. Yes.

A. No, not immediately; some little time.

Q. Well, it was very soon afterwards, wasn't it?

A. Yes, it was that summer.

Q. Now, the reason you employed Johnson was because you thought that he was in a better position to get you protection than anyone else. [2128—1798]

A. I thought he could render me the best service.

Q. Well, because you thought he stood in the best position to get you protection and obtain any favors from the Government that you could obtain? You thought that there was no one else that was able to get as many favors for you from the Government as Johnson, didn't you?

A. I knew he was in a position to render me the best service, and the protection—

Q. And you knew that he was in a position to get you more protection than anyone?

A. I didn't know just how he stood with the prose-

(Testimony of C. W. Robnett.)

cutting officials.

Q. You knew that he was Assistant United States Attorney, and assisted in the prosecution of those land cases when you testified before, and assisted in prosecuting you when you was tried and convicted?

A. Yes.

Q. For subornation of perjury, didn't you?

A. Yes, sir.

Q. And you knew that he had full knowledge of all those transactions, didn't you? A. Yes, sir.

Q. And you knew he was not on friendly terms with Kettenbach and Kester, and Dwyer, didn't you?

A. Yes, I knowed there was a certain amount of—

Q. And you knew that he would do all that he could to indict Kester and Kettenbach and Frank W. Kettenbach, didn't you?

Mr. GORDON.—I object to that as not proper cross-examination.

Mr. TANNAHILL.—Answer the question.

A. I knew that he would do anything that he could for my protection—to protect my interests.

Q. And you knew that if it was possible for him to get absolute immunity for you, that Johnson was the only one that could do it, didn't you? [2129—1799]

A. Oh, I didn't know that he was the only one. I knew that he was in a position to render me the best service of anyone, of anyone I knew at that present time.

Q. To render you the best service in the way of getting immunity for you?

(Testimony of C. W. Robnett.)

A. Oh, immunity wasn't the thing that was considered, but it was protecting my interests all along the line.

Q. Either by immunity or in any other way?

A. Yes—to protect my interests.

Q. Yes. Well, if you got immunity from these attorneys, that would be protecting your interests, wouldn't it?

A. Why, it would; but the Government men stated that that could not be done.

Q. Well, if it could be done you knew that Johnson was the only one that could do it, didn't you?

A. Well, I suppose if it could be done, he could accomplish something along that line; but I knew that it couldn't be done.

Q. And that was one thing that induced you to employ Johnson, wasn't it?

A. The proposition that caused me—

Mr. TANNAHILL.—Just answer the question yes or no.

At the request of the witness, the Reporter thereupon repeated the last question.

WITNESS.—I employed him to give me the best protection possible to protect my interests.

Mr. TANNAHILL.—Q. You employed him to give you the best protection possible to protect your interests? A. Yes, sir.

Q. And you didn't care how your interests were protected just so you got them protected, did you?

A. Well, I didn't want anything out of the way, unjust, done. [2130—1800]

(Testimony of C. W. Robnett.)

Q. Well, if he could get immunity for you by you testifying against these defendants, you was willing to do it, wasn't you?

A. No; that wasn't— It was simply to tell the facts as I knew them.

Q. Well, now, just tell us what you told Johnson regarding the protection you wanted?

A. At the first meeting, when I went to employ him?

Q. Yes.

A. Why, I went and seen Mr. Johnson and I told him that I came in to talk with him in regards to taking my matters in hand in regards to the bank matter and the timber matters, and he stated, "Well," he says, "now, I can handle the bank matter, but I can't advise you at all in regard to the timber transactions; but before I will make any statement," he says. "I want you to tell the facts as they are, and," he says, "you come down this evening and we will go over the whole matter together in the office, where everything is quiet."

Q. And was anything else said?

A. I told him all right, I would so. That evening I went down and we talked the whole situation over, and I asked him along those lines, if the Government could grant any protection, and he says "No," and I told him what I had asked, for the bank matter to be impartially presented, and he said that was all right, and that was as far as they could go, and he said if I could get that done it was accomplishing a great deal.

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